

No. 11661  
IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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HOME INDEMNITY COMPANY OF NEW YORK,  
Appellant,

vs.

STANDARD ACCIDENT INSURANCE COMPANY  
OF DETROIT; GEORGE WHITE; JAMES CARL  
FITZGERALD; JAMES RICHARD OSBORNE;  
MICHAEL LEE and PATRICIA LEE,  
Appellees.

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**TRANSCRIPT OF RECORD**

(In Two Volumes)

**VOLUME II**

(Pages 235 to 479, Inclusive)

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
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(Testimony of Henry T. Briggs)

The Witness: Well—

The Court: Wait a minute.

The Witness: I am sorry.

The Court: How far away was the car from you that was coming from the north at the time you heard the brakes screech?

The Witness: Well, I was closer to them than that then. I was, oh, I would say a hundred feet.

The Court: All right. Proceed, counsel.

Q. By Mr. Menzies: When you say you were 100 feet from the oncoming car, do you mean that was the distance between your car and the oncoming car at the time of the impact; is that right?

A. That's right. [48]

Q. Did you hear the sound? A. Yes.

Q. Did you hear any breaking of glass?

A. Well, I heard something rolling down the highway.

Q. What did it sound like?

A. Well, glass and like the inside of a grill fell out.

The Court: Now, the inside of what?

Mr. Menzies: The inside of a grill.

The Witness: Grill.

The Court: What is a grill?

The Witness: That is the front of your car.

Q. By Mr. Menzies: The front grill on an automobile, I take it? A. It is spelled g-r-i-l-l.

Q. Now, could you observe the speed of the car as it came towards you before it struck these people that were crossing the road?

A. No, I couldn't say the speed it was coming.

(Testimony of Henry T. Briggs)

Q. Well, could you tell the court whether it was coming fast or slow?

A. Well, I would say it was coming over the speed limit, anyhow.

Q. Pardon?

A. I would say it was coming over the speed limit. [49]

Q. What do you mean by "over the speed limit"?

A. Well, I don't know actually the speed, but, well, I would say—I would say 40 miles an hour, 45.

Q. What happened to the car after you saw it strike these two people?      A. It went on.

Q. Did it slow down or did it speed up?

A. Well, I didn't look back at the car. I figured the man stopped. I am figuring again.

The Court: Just go back to the accident—and don't be nervous—take all the time you want and just be quiet. Now, you were there. Listen to the question carefully and do not answer it until you thoroughly understand the question because you are under oath. Be careful and take all the time you want. Do not be nervous.

Now, Mr. Reporter, please repeat the question.

(Question read by the reporter.)

The Witness: I will have to think back now.

The Court: Take your time.

Q. By Mr. Menzies: That is, if you know.

A. Well, I am trying to think of what I was doing.

Well, I heard the brakes squeal, and when I heard the brakes squeal I didn't look around at the car any more. And then I went across the street and got a sheet from the Solano Cafe and I come back and covered the lady up and I got a [50] flashlight and started waving the

(Testimony of Henry T. Briggs)

traffic and slowing them down so they wouldn't run over the people, but I thought the man stopped.

Q. You did not see what happened to the car?

A. I didn't see what happened to the car.

Mr. Menzies: That is all. You may examine.

Cross Examination

By Mr. Nourse:

Q. When you first noticed this other car, you say your car was about 175 feet from it?

A. When I noticed it?

Q. Yes, when you first noticed this other car.

A. Well, when I first noticed the other car, yes, that is about the right distance. I mean that is approximate.

Q. And do you remember testifying at the coroner's inquest? A. Yes, I do.

Q. That was on the 23rd of July, just three days after the accident?

Mr. Menzies: What page, Mr. Nourse?

Mr. Nourse: Page 122 it starts on.

I am reading commencing on line 15, the last part of the coroner's question. He asked about three questions once but ended up with this one: [51]

"Q. . . . Just give us a statement of what you actually saw."

Q. By Mr. Nourse: Do you remember testifying as follows:

"A. Well, I was traveling north on Highway 101, coming from San Diego, and just coming up that incline by the cafe."

I am skipping the question.

(Testimony of Henry T. Briggs)

“A. A slight incline—and I seen these people walking across the street, but I seen the one—I thought it was a lady and a dog, because the man was bending down, picking something off of the street—but he was in the third lane, I mean, the center lane. They were right at this point (indicating on diagram).”

That is “XS” on the coroner’s diagram.

“A. Yes, it is. And, well, he was bending down and picking something up—and then the next thing I seen, the car—the lady was running across the street towards me, and the car was coming at me also, so the best thing for me to do was to swing to the right of the road to avoid running over the lady, and then this other car was coming toward me, and swerved on and went on, but I heard the squeal of brakes and the thud, and the two bodies were rolling towards my car.”

Is that the best of your recollection as to how that thing happened? [52]                      A. Yes, it is.

Q. Is it not true, then, that when you first saw this car, when your attention was first attracted to the car and the people, the car was coming over towards the center of the road and the lady was running towards you and the car coming towards you?

A. Well, the car was traveling in the center of the road.

Q. Wasn’t it coming towards you?

A. Well, when I seen the car I would say it was . . . well, there is two white lines coming down the highway, and I would say part of his left fender and wheel was over this white line.

(Testimony of Henry T. Briggs)

Q. Calling your attention to the transcript here that you saw the car, the lady rolling towards you and the car coming towards you—

A. She was rolling. He had hit them already. She was rolling.

Q. Let me read it to you again and see if this is correct. Was your memory pretty fresh at that time?

Mr. Menzies: I will object to counsel's arguing with the witness. If he seeks to ask him, your Honor, whether or not he so testified, I have no objection. But it is purely the court's function to determine whether or not this witness' memory was fresher then than it is now. [53]

The Court: I have had witnesses say they could not remember very much under certain conditions; so I assume that those conditions are not here. However, it is a perfectly proper question.

Q. By Mr. Nourse: Your memory was pretty fresh as to the accident at the time you testified at the coroner's inquest? A. Yes.

Q. Let me call your attention again to what you said there, and tell me whether or not this was a true statement of what you saw:

" . . . and then the next thing I seen, the car—the lady was running across the street toward me, and the car was coming at me also. . . ."

Is that right?

A. She was not running. She was rolling. She was rolling along the highway.

Q. ". . . so the best thing for me to do was to swing to the right of the road to avoid running over the lady, and then this other car was coming toward me. . . ."

(Testimony of Henry T. Briggs)

Now, was the other car coming towards you?

A. Well, probably in the excitement and everything I figured he was coming at me because when he hit them people and they come running at me, I just swerved off the highway.

The Court: Now, read back what the witness just said. [54] I think he does not mean what he said.

(Answer read by the reporter.)

The Court: Stop there. Who came running at you?

The Witness: What I mean to say, they were rolling because the body was rolling. I stuck my head out the window. Well, her leg was mangled and blood all over and that was a mess. So I just parked the car and run and got a sheet and covered her up.

The Court: Proceed.

Q. By Mr. Nourse: How far was the car from these people when you first saw them?

A. May I have that question again, please?

Q. How far was the other car from these people when you first noticed the car and the people?

A. Oh, I would say that the car was 20, 30 feet.

Q. Did you realize right then that the people were going to be hit?

A. Yes, I knew it in my mind they were going to be hit because I went to hit my wife and tell her about it.

Q. Did you then apply your brakes and turn to avoid them?

A. I couldn't say for that because I know I had my brakes on; and, well, it all happened so fast. I had my brakes on, and I was pulling off to the side of the road and trying to avoid running over the people because they



(Testimony of Henry T. Briggs)

were [55] rolling toward me, and I just pulled over to the side of the road.

Q. And your brakes were screaming?

A. I wasn't going that fast that my brakes would squeal.

Q. What?

A. I was not going so fast that my brakes would squeal.

Q. May I call your attention to the testimony at page 24—

Mr. Menzies: You mean 124?

Mr. Nourse: What? Page 24.

Mr. Menzies: 124?

Q. By Mr. Nourse: —page 124 of the coroner's inquest, line 22:

“Q. You know that this definite car put its brakes on, you could tell that that was a squeal from that car?

“A. Yes—and I even had my on, and I was screaming also.”

Does that refresh your recollection as to what happened at that time?

The Court: Now, read the last part of that.

Mr. Nourse: “. . . and I was screaming also.”

The Court: “I”? Was it your brakes or you personally? [56]

The Witness: I think I was screaming, too, because—well, it was just a mess to me.

The Court: That is what I wanted to clear up.

Q. By Mr. Nourse: Which was it, do you remember? Were your brakes screaming?

A. Well, I had my brakes on, but I wouldn't swear to it because I was excited and, well—

(Testimony of Henry T. Briggs)

Q. Then, after you put on your brakes, after you applied your brakes, you did hear the scream of brakes, is that right?

A. After I heard the thud, then the brakes.

Q. Yes.

A. And, well, it all just happened just all at once, like.

Q. And you could not tell where any noise came from, and it was all over in about one second?

A. I knew the car that hit the people had the brakes on when that occurred, anyhow, because, well, the thud and then the brakes, and then, well, I didn't have my brakes on until the body came rolling towards me and I just pulled off to the side of the road.

Q. I should like to read to you some more testimony from the coroner's inquest. Going on with page 123—

The Court: What was the date of that testimony, Mr. Nourse? [57]

Mr. Nourse: The date of the coroner's inquest?

The Court: Yes.

Mr. Menzies: The 23rd of July.

Mr. Nourse: The 23rd of July, three days after the occurrence of the accident.

Mr. Menzies: What page, please?

Mr. Nourse: Page 123.

“Q. Did you see the car coming prior to the accident? Did you see a car coming which you think—

“A. Yes, I seen the car coming, and it was coming at a fast pace, I would say.

“Q. You knew they were going to get hit?

A. I knew they were going to get hit, because I was just going to say to my wife, ‘Look at that lady and the



(Testimony of Henry T. Briggs)

dog crossing the street, and this crazy fool coming toward them,' but I didn't—it didn't come out. At the time it was going to come out, they were coming toward me, and I was swinging to the right to avoid running over the lady.

“Q. The car coming south had two headlights, did it?

“A. Well, I was watching the people, and trying to watch the car. I didn't notice if they had—”

Q. By Mr. Nourse: Is that correct?

A. That is right.

Mr. Nourse: May I have just one moment here, your Honor? I have a partial index of this. [58]

Q. By Mr. Nourse: How fast were you traveling that night?

A. Oh, I would say about 40 miles an hour.

Q. About 40. Do you remember being questioned by Mr. Menzies here while you were at the coroner's inquest?

A. Yes, I do.

Q. And didn't you—

Mr. Menzies: What page, please?

Mr. Nourse: Page 140.

Mr. Menzies: What line?

Mr. Nourse: Well, I am trying to get it, Mr. Menzies, and I will tell you in just a moment.

Mr. Menzies: Thank you.

Mr. Nourse: Maybe I have the wrong page. I thought I had it from the index. Page 143. I was mistaken.

I will have to start on page 142, I guess, to get the sense.

(Testimony of Henry T. Briggs)

Q. Well, was there any other cars between your car and where you first saw this lady with what you thought was a dog?

"A. Well, there was one on the side of the road.

"Q. Which side of the road?

"A. The right, the right side of the road.

"Q. As you were heading north?

"A. I was heading towards Los Angeles. [59]

"Q. Were there any one . . . the west side of the road, coming towards you, besides this other car?

"A. No, there was just this—only the car that was coming towards us.

"Q. And how long—where did you stop your car, with relation to where the impact occurred?

"A. Well, as she came at me, and him, too, so fast, that by me avoiding it and pulling over, I had my brakes on at the same time, and just leaving the car right where it sat, right off the roadway."

Q. By Mr. Nourse: Is that correct?

A. That's right.

Q. Is it not a fact that the minute you saw this car you knew an accident was going to occur? A. Yes.

Q. And when you knew it was going to occur you immediately applied your brakes and turned to your right?

A. No, I didn't apply my brakes until it all happened. Well, when I looked up it was just happening.

Q. Then you applied your brakes?

A. I put my brakes on. I had my brakes on as I was turning.

(Testimony of Henry T. Briggs)

Q. Then as the car passed you, you heard the scream of brakes and that brought you to the belief that it was going to stop? [60]

A. Yes, I figured the car stopped right where it hit the people.

The Court: Did you put on your emergency brake or the regular brake?

The Witness: When I parked? I wouldn't remember that, but I think I even left the motor running and the brake on.

Mr. Nourse: That is all.

The Court: Is there anything further? Does any of the other attorneys have any questions?

Mr. Luce: I should like to ask a question or two, your Honor.

The Court: All right.

### Cross Examination

By Mr. Luce:

Q. Mr. Briggs— A. Yes, sir.

Q. —at about that point in Solano Beach there are little stores and cafes strung along on either side of that highway? A. Yes, there is.

Q. There was no marked crosswalk at the point where these persons were crossing, was there?

A. No.

Q. There was no marked crosswalk anywhere close to them, was there? [61]

A. Well, unless there is one down further by the plaza.

Q. Well, the plaza would be how far away?

A. Oh, about two blocks.

(Testimony of Henry T. Briggs)

Q. Well, there was no marked crosswalk within two blocks of the scene of the accident, was there?

A. No.

Q. There was no street-crossing at the place where the accident occurred, was there?

A. I couldn't say as to that. There is one back by the plaza. There is a street.

Q. Well, you did not see any street-crossing there?

A. No.

Q. In other words, this was not at a street intersection where the accident occurred, was it?

A. No. There was a cafe and a line of stores across the street.

Q. There was no opening of a street going out on either side? A. No.

Q. At or about the point of the accident?

A. No.

Q. Mr. Briggs, you saw this approaching car prior to the accident for only an instant, did you not?

A. Well, I see the car coming and the people there. I [62] knew that they were going to get hit.

Q. You did not see that approaching car travel for more than 75 feet before the impact, did you?

A. Give me that question again, please.

The Court: Mr. Reporter, repeat the question.

(Question read by the reporter.)

The Witness: Well, I wouldn't say.

Q. By Mr. Luce: Will you tell me how far you did see it travel prior to the impact?

A. I am getting all confused now.

The Court: Take you time, Mr. Briggs.

Mr. Luce: May I clear that up, perhaps, for you?

(Testimony of Henry T. Briggs)

Q. You saw this approaching car before the impact? And by "the impact" I mean the collision with the pedestrians.

A. I would say that the car was coming at the people before they were hit, oh, 20 to 25 feet before they were hit.

Q. That is, you saw this car—

A. I see the car, and I seen the people; and the people were 25 feet from the car and the car was coming at them.

Q. That is, when you first saw this car it was about 25 feet from the people?

A. Yes. No, I seen the lights coming down the highway; and, well, naturally, you don't pay much attention, but [63] you know there is a car coming. I knew there was a car coming.

Q. You only had an opportunity to see the approaching car or observe it a distance of about 25 feet prior to the time it collided with the pedestrians?

A. I was watching these people that were crossing the street, yes, and watching the car, too.

Q. That is substantially correct, is it not: that you saw it travel about 25 feet? A. Yes.

Q. While you were observing it before the accident?

A. Yes.

Q. Are you willing to tell us here under oath that you can judge the speed of that car when you saw it travel only 25 feet at night approaching you?

A. Well, if I did give any statement about speed, it was just approximately, anyhow. But, well, it just seems like when you look at a car coming at you and if it is coming at any speed, you can see the two headlights bouncing.

(Testimony of Henry T. Briggs)

Well, with me, being a mechanic, I judge a lot of things along the highway; and I like to take interest in cars and how they drive and how it happens. And I like to figure out those things.

Well, I know if I drive my car fast and it's coming at me, looking at it straight on, I can see—you have seen a [64] bull running, how they—

Q. Mr. Briggs, you have no way of estimating the speed of that car in the distance that you saw it travel, have you?      A. No, I haven't because—

Mr. Luce: That is all.

The Court: Anything further?

Mr. Nourse: I should like to ask something. I overlooked something I should like to ask the witness.

#### Redirect Examination

By Mr. Nourse:

Q. Would you look at this statement and see if you remember making this written statement of the accident?

A. Yes, I do.

Q. On December 24 of 1946?

A. Yes. I just got in to Detroit Saturday at midnight, and I didn't even have time to have my breakfast, didn't brush my teeth, and there was a knock on the door and there was an investigator. I was still sleepy. I had driven 2900 miles, and I had about four hours' sleep, and I made this statement.

Q. This is your signature?      A. That is.

Q. On both of these pages?      A. That is.

Q. May I read you part of it, please? [65]

A. Is this water good to drink?



(Testimony of Henry T. Briggs)

Mr. Nourse: I think that is what it is there for.

"I saw the headlights of a southbound automobile which was straddling the line between the west and center lanes of the highway. This car hit the two people, throwing the man to the center of the road and the lady over into the east lane in which he was proceeding north.

"I immediately swerved to the right and went off the shoulder of the road on the east side, and my car stopped, facing east. My car did not touch the lady as she rolled toward us. The southbound car slowed down at the corner about one and a half blocks to the south and then he kept on going. . . ."

Skipping the description of the injuries—well, I will read it all.

"The man was killed instantly, and the lady lived until the following morning. At the time of the impact I would say the southbound car was straddling the line dividing the west and center lanes of the highway.

"However, immediately after the impact this car seemed to come over towards the center of the road, but I cannot say how far as it happened so fast, and he went on. I could not estimate his speed. I only saw the headlight coming towards me, but I do know that one of the reasons I swerved right was because the southbound car seemed to be [66] coming towards us after the impact with the man and lady.

"It was after George White had pleaded guilty in court that I spoke to him, and he told me that he didn't know what had happened, as he was asleep at the wheel.

(Testimony of Henry T. Briggs)

"I have read the above statement of two pages, and it is true to my knowledge and belief.

"Henry T. Briggs."

Q. By Mr. Nourse: Was that statement made by you?      A. That's right.

Q. Is that correct?

A. Well, he only asked me several questions, and I can't figure out how he got three pages out of it.

Q. It is only two. You read it at the time?

A. I did. My wife read it also. This fellow visited me, and he only asked me a few questions, and he got out two pages.

Q. Did he get anything wrong?

A. No, but he kept adding if's and and's.

Mr. Nourse: And the it's and an's were right. Maybe he had a crystal ball.

That is all.

The Court: Any further questions, gentlemen?

Mr. Lonergan: No questions.

The Court: Mr. Luce?

Mr. Luce: No. [67]

The Court: Any questions, Mr. Menzies?

Mr. Menzies: No questions.

The Court: That is all. Call your next witness.

(Witness excused.)

Mr. Menzies: Mr. Hawkins.



LONNIE LEE HAWKINS,

called as a witness by and in behalf of the defendant Home Indemnity Company, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Lonnie Lee Hawkins.

The Clerk: How do you spell your first name?

The Witness: L-o-n-n-i-e, Lee, H-a-w-k-i-n-s.

Direct Examination

By Mr. Menzies:

Q. Mr. Hawkins, where do you reside?

A. I have an apartment in the back of my cafe, the Solano Cafe in Solano Beach, California.

Q. Where is that Solano Cafe located with relation to Highway 101?

A. It is on the west side of the highway about a half a block from the bank building north.

Q. About how far?

A. About a half a block from the bank building north, the Bank of America. [68]

Q. Directing your attention to on or about the 20th day of July, 1946, did you hear or see anything unusual on that day?

A. Well, the wife and I had just got back from going and getting our children from the movies in Encinitas.

Q. What time was that?

A. Well, we got back—it must have been about 10:00 o'clock, and I begin getting ready for the next day, that is, cutting my meats and getting my roasts wrapped and tied, and so forth, for the next day.

Q. Where were you at that time?

A. I was in the kitchen of my cafe.

(Testimony of Lonnie Lee Hawkins)

Q. Is there anything that divides the kitchen in your cafe from the portion in which you serve the meals?

A. There is a back bar about five feet high and a counter.

Q. Was there anyone else there in the cafe with you at that time?           A. My wife was there.

Q. Do you recall what time of day or night it was?

A. Yes. I had just looked at the clock just before going out to the ice box to get a quarter of beef to bring in, and it was 25 minutes to 11:00 o'clock. And I know because I was just wondering if I would have time—we close at 11:00 o'clock—and I was wondering if I would have time [69] to get my meat all put up for the next day by closing time.

Q. What happened?

A. Well, I heard an awful screeching of brakes and an awful impact. At the first screeching of the brakes I looked up, and there was nothing to obstruct the view from where I was through the front. The front of the cafe is glass, which is about 16 feet wide, and as I looked up I see these cars coming past the cafe, that is, I seen just a blur of cars and people.

I knew there had been a wreck in front, but I thought at the time a couple of cars had run together.

I dropped what I was doing and ran out the front, and I was on the sidewalk and looked in both directions. I ran and I seen these people across the street, and I ran across the street to where they were. But by the time I got to the center lane there was a car that had pulled over, had swerved over to keep from hitting these people, and he had just come to a stop.

(Testimony of Lonnie Lee Hawkins)

Q. Do you know who was driving that car?

A. No, sir, I don't.

Q. Did you see him in the court room today?

A. I don't know who was driving that car at the time. I couldn't swear to it.

Someone said, "Stop that car." I looked to the right, and the car at that time was about in the center lane but it [70] was swerving over to the right side of the road, and I thought it was stopping. It was going awfully slow, slowing down awfully fast, rather.

The Court: In what direction was that car going?

The Witness: That car was going south, sir.

The Court: All right.

The Witness: And it was just about even with the Bank of America Building at that time and was almost stopped, and I said—

Mr. Nourse: Just please tell what you saw, not what you said.

The Witness: Well, someone told me to stop the car and I told him that it had stopped.

Mr. Nourse: I object to that and ask it go out as hearsay.

The Court: Just what you did, what you saw.

The Witness: Then I ran over to where the bodies were because I seen another car coming north. I could see the man. His head was laying just about even with the white line, the extreme eastern white line there, you know, right on the shoulder. And I was afraid this other car was going to run over him. So I ran out and was directing this other car that was going north away from the bodies, and when I looked up then, when I paid attention to see whether this car had stopped for sure— [71]

(Testimony of Lonnie Lee Hawkins)

The Court: "This car?" Which one?

The Witness: The car that I presumed had hit them.

The Court: Strike that out. Just tell us what you saw. The one that was going south?

The Witness: Well, I thought that was the car that was stopping, sir.

The Court: All right, go ahead.

The Witness: But after this car that was coming north, after it had already passed I seen that this car that was going south had not stopped as I thought it had in the first place.

Q. By Mr. Menzies: Did you see what it did?

A. No, sir, I didn't.

Q. What did the car do, that is, the car that was going south, that indicated to you that it was stopping?

A. Well, as I first noticed it, it was in about the center lane and it was swerving a little and pulling over to the right and slowing down.

Q. You mean that it was swerving from side to side? Or was it going to one side only?

A. Well, it looked as though he was trying to get his car under control again. It looked as though—

Mr. Nourse: I ask that be stricken out as a conclusion of the witness. He can tell which way it was swerving or what it was.

The Court: There is no jury. I think I understand, [72] counsel, what he means. Go ahead.

Q. By Mr. Menzies: Do you know whether that car stopped or not? A. No, sir, I don't.

Q. Did you see it when it pulled away?

A. No, sir.

(Testimony of Lonnie Lee Hawkins)

Q. Do you know what color that car was?

A. At the time I thought it was maroon.

Q. But you do not know what it was?

A. I don't know for sure, no, sir.

Q. Now, which did you hear first, Mr. Hawkins, when you were back there in the back part of your restaurant? Did you hear a screech of the brakes or the impact first?

A. I would say I heard the screech of the brakes just a moment before the impact and also the screaming of someone just about the time of the brakes screeching. Someone screamed.

Q. How far were you from the front of your store? Can you tell us approximately?

A. About 25 or 30 feet.

Q. Pardon?

A. About 25 or 30 feet from the door of my cafe that leads into the cafe back to the kitchen to where I was. It is about 25 or 30 feet.

Q. Was the door open in the cafe? Or was it closed? [73]

A. It was open.

Q. How far from the front of your cafe to the first white line in the pavement there, do you know?

A. Well, there is a sidewalk about 12 feet wide, and there is a shoulder of the road which would be about another 10 feet. It would be about 22 to 25 feet.

Q. Pardon?

A. It would be from 22 to 25 feet from the door of the cafe to the first white line.

Q. Did you examine the highway there that night to determine if you could where the point of impact was?

A. Yes, sir, we did.

(Testimony of Lonnie Lee Hawkins)

Q. Can you tell me about how far it was from where you determine the point of impact to be to where you were standing at the time you heard the person screaming and the brakes of the car screeching?

Mr. Nourse: Your Honor, I don't think that is a proper question, if we get the conclusion of the witness as to where the point of impact was, without giving us or the court any knowledge as to what marks he saw or where these marks were or from what point he is testifying to now.

The Court: I think this witness can fix the place he saw the marks, counsel.

Mr. Nourse: Yes, if he can tell us what he saw.

Q. By Mr. Menzies: What did you see on the highway, [74] Mr. Hawkins, that indicated to you where the point of impact was?

A. It was near the center of the highway, and there was an awful lot of broken glass there. Glass was scattered; small particles were scattered for quite a distance on south. Right at the north corner of the front of my cafe is a lamp post. At the time the light was out. It wasn't burning, and it was just about due east of that lamp post out about 15 feet out in the highway. I would say, is where the point of this impact was, I believe.

Q. When you say "out into the highway 15 feet." from what point do you mean that?

A. From the curbing.

Q. From the curbing? A. Yes, sir.

Q. How far would you say that was from where you were standing in your cafe there behind the back bar?

A. I would say about 35 feet, 40.



(Testimony of Lonnie Lee Hawkins)

Q. Do you know how far the bodies were from the point of impact when you first saw them, just approximately?

A. Well, I didn't step it off; but I would say they were between 60 and 80 feet.

Mr. Menzies: That is all. Thank you, sir.

The Court: Cross examine. [75]

Cross Examination

By Mr. Nourse:

Q. You say you were in the kitchen about 25 feet from your front door, is that right?

A. Yes, sir.

Q. Then there is a sidewalk that is about 12 feet?

A. Yes, sir.

Q. The shoulder of the road is 15 feet there, isn't it, to the first paved lane of traffic?

A. No, sir. I don't think it is quite that far.

Q. Well, what is your best estimate?

A. Not over 10 feet at most.

Q. Now, there is 12 and 5—37—and 10, 47. Was it when you got over at the bodies that you turned and saw the maroon car nearly at a stop?

A. Well, sir, I glanced toward the car that I thought had hit them and was slowing down. I glanced at that car as I was crossing the street going to the bodies.

Q. You were at about the center of the street then?

A. I was at about the center of the street.

Q. Well, the first lane is how wide? You got to the shoulder now and were 47 feet from where you were. Then you had first crossed which? The northbound lane of traffic, the northbound traffic lane?

A. No. I would first cross the southbound traffic [76]

(Testimony of Lonnie Lee Hawkins)

Q. You were on the ocean side?

A. Yes, sir, on the west side.

Q. Your cafe faces north? A. Faces east.

Q. Faces east, rather. Then you came out and you crossed the sidewalk, the shoulder, the first traffic lane and got about to the center of the street when you turned and saw this car to the south of you?

A. I believe that is correct, sir.

Q. It was then about in front of the bank building?

A. No, sir, it was not in front of the bank building at that time.

Q. Where was it then?

A. Well, it was, I would say, maybe 150 feet from where I was standing at the time.

Q. 150 feet from where you were standing. It was then weaving in the highway towards the right and going about what speed?

A. Well, they were slowing up all the time. All the time they were trying to get the car stopped, see.

Q. Well, how long did you look at them, glances at them as you were crossing the road there?

A. I only took a quick glance, and then I glanced back to where the bodies were and proceeded on across the street to where the bodies were. [77]

Q. And at that glance you could see that he was attempting to slow down, is that it? A. Yes, sir.

Q. That is, you drew that conclusion?

A. Yes, sir.

Q. How many miles an hour do you think you traveled going from your kitchen out there?

A. About seven.



(Testimony of Lonnie Lee Hawkins)

Q. About seven. And you traveled pretty near 75 feet to the center of the road, didn't you, where you made this glance to the south?

A. No, I didn't travel 75 feet.

Q. What?

A. I didn't travel 75 feet to the middle of the road.

Q. I will give it to you again. 25 feet to your front door, 12 feet across the sidewalk is 37, 10 feet across the shoulder is 47, 10 feet across the first traffic lane is 57, and however much the distance to the center of the highway, it would be  $7\frac{1}{2}$  feet more.

A. I might not have been directly in the middle of the road. I might have been five feet this way.

Q. Or five feet the other way. So I said about 60 feet.

A. Approximately, yes, sir.

Q. Your best memory is that when you reached the other [78] side of the road this northbound car had just come to a stop?

A. It had already come to a stop, yes, sir.

Q. The man was getting out of it, wasn't he?

A. I believe he was turning the handle on his car and getting out, yes, sir.

Mr. Nourse: I think that is all.

The Court: Any questions?

Mr. Luce: No questions on our part.

The Court: Any questions?

Mr. Lonergan: No questions.

The Court: That is all, thank you.

(Witness excused.)

Mr. Menzies: Mrs. Hawkins, will you take the stand, please?

## BEATRICE HAWKINS,

called as a witness by and on behalf of the defendant Home Indemnity Company, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name, please?

The Witness: Beatrice Hawkins.

The Clerk: Will you take the stand, please?

## Direct Examination

By Mr. Menzies:

Q. Mrs. Hawkins, you are the wife of Mr. Hawkins who just preceded you on the witness stand? [79]

A. That is right.

Q. Directing your attention to on or about the 20th day of July, 1946, did you hear anything unusual that day?

A. Yes, I did.

Q. What time of the day or night was it?

A. Well, 25 to 11:00.

Q. Beg your pardon?

A. 22 until 11:00.

Q. And what did you hear?

A. Well, I heard the brakes and the scream and the hits, the noise.

Q. The crash?

A. Yes.

Q. Can you describe that crash and sound?

A. Well, to me it seemed more like two impacts.

Q. Sorry, I can't hear you.

A. I think it was two impacts.

Q. Two impacts?

A. That is what it sounded to me like.

Q. Were those sounds loud or dull?

A. Yes, quite loud.

Q. Which did you hear first?

A. Well, that I wouldn't say. I don't remember.

Q. Was it the screeching of the brakes, the scream or the thud? [80]

A. Well, it seemed to be more the brakes and the screams at the same time.

Q. The brakes and the scream at the same time, and then the thud? A. That is the way it seemed.

Q. Did you see what happened?

A. Well, no, I didn't see it as it happened.

Q. Where were you at the time that you heard the screech of the brakes, the scream and then the thuds?

A. I was sitting at the counter.

Q. In your restaurant? A. Cafe.

Q. There in Solano Beach? A. That is right.

Q. What did you see after you heard the thuds?

A. Well, I looked around and I saw the car stopping on the north side, I mean the east side of the highway, and the bodies flying through the air; and they looked to me that they were going to hit this car.

Q. That is, the car coming north?

A. That's right.

Q. Did you see what became of the car going south?

A. I don't remember seeing that car at all.

Mr. Menzies: That is all. You may examine. [81]

### Cross Examination

By Mr. Nourse:

Q. When you heard the scream you looked up?

A. Yes.

Q. You saw two bodies going through the air?

A. Yes. I think that is the first thing I saw.

Q. At the same time you heard the screech of the brakes, didn't you?

A. I heard the screech and the screams.

(Testimony of Beatrice Hawkins)

The Court: No, she does not understand the question.

Repeat the question, Mr. Reporter.

Listen carefully to the question.

(Question read by the reporter.)

The Witness: The question isn't clear.

The Court: All right, proceed.

The Witness: No, I had already heard those before I saw the body. Does that answer it.

Q. By Mr. Nourse: You heard the screech?

A. The scream.

Q. When did you look up? When you heard the screech of brakes or when you heard the scream?

A. Well, they seemed to be at the same time; so that is when I looked at.

Q. They seemed to be at the same time, and you looked up? [82] A. That's right.

Q. At the same time you looked up and saw the bodies in the air, you saw the northbound car, didn't you?

A. Yes, sir.

Q. It was coming to a sudden stop when you saw it?

A. It was stopping, yes, sir.

Mr. Nourse: That is all.

Mr. Lonergan: No questions.

The Court: Mr. Luce?

Mr. Luce: No questions.

Mr. Menzies: No further questions.

The Court: That is all.

(Witness excused.)

The Court: That is all.

Mr. Luce: Your Honor, before we take an adjournment may I present a very brief matter?

My client, Mr. White, has been brought up here as a witness under a writ of this court. He has been incarcerated in the industrial road camp in San Diego, not in the county jail, but in the road camp under the sentence of the court. When he was brought up here by the officer, the officer was instructed by the superintendent of the road camp if the case lasted overnight to lock Mr. White up in the county jail.

I think that he is under the jurisdiction and custody of this court, being brought here on a writ, and it would be [83] unfair and unduly harsh to lock him up in the county jail tonight.

The officer tells me he is perfectly willing to keep him in his room at the hotel, and it would seem to me that the court might have the power to direct that and that that would be the only fair thing to do, if he be kept by the officer in the room at the hotel rather than take him to the county jail.

The Court: What is the sentence in the road camp?

Mr. Luce: The term of it, your Honor? I think it was a year in the road camp but not in the county jail.

The Court: How long has he served?

Mr. Luce: A few days short of five months.

He is a man of prominence, as your Honor probably knows; and there is no danger of his running away or disappearing, and the officer is with him all the time, anyhow.

The Court: Is the officer here?

Mr. Luce: Yes, he is right here.

The Court: Step up, officer, and Mr. White. Both of you come up here.

(The defendant White and Officer D. S. Williams approach the bench.)

The Court: Swear the officer, Mr. Cross. [84]

D. S. WILLIAMS,

called as a witness, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: D. S. Williams.

The Court: What is your occupation?

The Witness: I am a guard at the industrial road camp, sir.

The Court: Under the State?

The Witness: Under the County.

The Court: Under the County of San Diego?

The Witness: Yes, sir.

The Court: Has Mr. George White here been placed in your charge for the purpose of appearing in this trial?

The Witness: That is true.

The Court: Have you known him for some time, or have you observed him in camp?

The Witness: I have known him ever since he has been in camp.

The Court: You have charge of the camp?

The Witness: I don't have charge of the camp. I have charge of the prisoners that are in the plant.

The Court: You have seen him frequently?

The Witness: Yes.

The Court: If I permit him to remain with you overnight [85] to report here tomorrow morning at 10:00 o'clock, will you take the responsibility that he is here at 10:00 o'clock in the morning?

The Witness: Yes, sir.

(Testimony of D. S. Williams)

The Court: Mr. White, you have heard the questions of the officer here.

I shall permit you to remain with the officer tonight if you stay in his custody and report here tomorrow at 10:00 o'clock.

The Defendant White: Yes, your Honor.

The Court: So ordered.

The Defendant White: Thank you very much.

The Court: Court is adjourned until 10:00 o'clock in the morning.

Mr. Menzies: Your Honor, I have one witness here. Perhaps counsel would stipulate. He is the court reporter that took Mr. White's statement. I had to bring him here in view of the answer.

I have the statement here that is certified by the court reporter.

Mr. Nourse: I said in my answer to the interrogatories, your Honor, that if they brought that I would stipulate it was correct.

The Court: That settles it.

Mr. Menzies: Very well. I will offer it in evidence [86] as exhibit B.

Mr. Nourse: It is already in evidence. I offered it myself.

Mr. Menzies: All right. 10:00 o'clock.

Mr. Nourse: Your Honor, I have a trial brief here that I prepared. It may be of assistance to your Honor.

The Court: Give it to the clerk.

(Whereupon, at 4:45 o'clock p. m. an adjournment was taken until 10:00 o'clock a. m., January 21, 1947.) [87]



Los Angeles, California, Tuesday, January 21, 1947,  
10:00 A. M.

The Clerk: No. 5729-O'C, Standard Accident Insurance Company of Detroit, a corporation, v. Home Indemnity Company of New York, and others, for further court trial.

Mr. Menzies: Ready.

Mr. Nourse: Ready.

The Court: Proceed, gentlemen.

Mr. Menzies: May it please the court: Mr. Nourse called my attention to the fact that I neglected to offer in evidence yesterday the two policies, that is, the one of the Standard Accident Insurance Company and the one of the Home Indemnity Company. At this time I will offer in evidence both of those policies and ask that the Standard Accident policy be marked as Exhibit B and the Home policy as Exhibit C in evidence.

Mr. Nourse: May I suggest, your Honor, to keep from encumbering the record, that counsel stipulate that the policy annexed to the complaint and marked as Exhibit A be deemed in evidence as Defendants' Exhibit B, and that the policy annexed to the Home's answer and marked as Exhibit A be deemed in evidence and be marked as Defendants' Exhibit C.

Mr. Menzies: That is satisfactory.

Mr. Nourse: That will obviate any possible duplication.

Mr. Luce: That is satisfactory.

Mr. Lonergan: That is satisfactory. [90]

The Court: So ordered.

(The documents referred to were marked Defendants' Exhibit B and C, and were received in evidence.)



Mr. Menzies: There is one other item. Yesterday I offered the Home's interrogatories to the Standard Accident in evidence. I believe the ruling of the court was that those interrogatories were rejected. I will renew my offer now for the reason that I believe that was an inadvertent mistake. The answers to those interrogatories are in evidence and are marked Exhibit A, but the interrogatories themselves have not been received in evidence.

The Court: If that is the record, it is so ordered.

Mr. Menzies: And may those interrogatories then be marked as Exhibit D?

Mr. Nourse: Why don't you have them a part of Exhibit A.

Mr. Menzies: A part of Exhibit A is satisfactory.

The Court: So understood.

Mr. Lonergan: Your Honor please, I believe we objected to the introduction of the answers.

The Court: They are not binding on your clients.

Mr. Nourse: That is right, your Honor.

The Court: Subject to the objection, it will be received.

(Thereupon the interrogatories referred to were received in evidence and marked as a part of Defendants' Exhibit A.) [91]

Mr. Menzies: Mr. Cassin, will you take the stand, please?

## FRANCIS WILDERN CASSIN,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

## Direct Examination

The Clerk: Will you state your name, please?

The Witness: Francis Wildern Cassin.

By Mr. Menzies:

Q. What is your business or occupation, Mr. Cassin?

A. Motorcycle officer, San Diego Police Department.

Q. Do you know the defendant, George White, in this case?

A. I have met up with him, yes, sir.

Q. Do you see him here in the court room today?

A. I do.

Q. Directing your attention to on or about the 20th day of July, 1946, did you see the defendant, George White, on that day?

A. I did.

Q. At or about what time?

A. Approximately 10:45, 10:50 of the evening of July 20, 1946.

Q. Whereabouts did you see the defendant, George White, at that time? [92]

A. Approximately half a mile south of Balboa on U. S. 101.

Q. Was he driving a car at that time?

A. Yes, sir.

Q. What kind of a car was it?

A. A 1942 Lincoln Zephyr.

Q. Do you recall the color of that car?

A. Gunmetal.

(Testimony of Francis Wildern Cassin)

Q. Just tell us what if anything first attracted your attention to this 1942 Lincoln Zephyr.

A. Prior to meeting up with his car an all-car pickup had come in on a hit-and-run from Solano Beach. I was in the north beach area and cut across Garnet Avenue to U. S. 101 and was sitting at the intersection watching traffic. I noticed a car coming south, traveling south on U. S. 101. It come out of Rose Canyon, and it was a Willys sedan, with a headlight out, and that car turned into the General Petroleum station there at the corner of Balboa and U. S. 101. A minute or two later a car being driven on the inside lane towards San Diego south come out of the canyon. I noticed this was a Lincoln sedan. The left front headlight was out. I kicked over my motorcycle, apprehended the car, and stopped the car approximately half a mile south of that intersection.

Q. At the time you first saw the car you described as the 1942 Lincoln Zephyr, can you tell me the approximate speed [93] it was traveling?

A. I would say approximately 45 to 50 miles an hour; nothing unusual about his speed.

Q. What occurred when you stopped the car about a half mile south of Rose Canyon?

A. That is after the car stopped?

Q. Yes, sir.

A. I walked up to the driver's side and the driver asked me what I was stopping him for. I told him he had damage on the front end of his car, that I would like to see it. He had no objections, and I went up to the front of the car and noticed that the left front headlight was dented in. I came back to the car and had the driver

(Testimony of Francis Wildern Cassin)

turn off the ignition. At that time I asked the driver for his operator's license. He stepped out of the car, handing me his operator's license. I asked him how far down the highway he had come. He said, "From Los Angeles." I asked him if he had made any stops on the way down, and he said, "Yes, at the Del Mar Hotel."

I asked him how long ago that had been. He said, "Approximately 20 or 25 minutes ago."

So I went up and looked at the front end of the car again. All I had was my flashlight. I examined the evidence and told Mr. White, the driver, that there was sufficient evidence on the front of his car to be taken in. I asked him if he had [94] any objections, and he said, "No." And we proceeded from there to the police station.

Q. Did you follow him with your motorcycle?

A. Yes, sir, down to just before we got to Market Street. Then I led the way to make a U-turn in front of the police station.

Q. After you got to the police station, what occurred?

A. Well, I was leading the way, made a U-turn, and just as I approached for the U-turn, Sergeant Christian had just ridden up on his motorcycle and was racking it there in front of the police station. I called to Chris and told him I had the car. We swung around. I racked my motorcycle. Mr. White parked his car on the east side of the street, headed north. Mr. White got out of the car. Chris, Sergeant Christian, came back, went to the car and looked at the damage on the front end of the car and turned and told me to take the driver inside.

(Testimony of Francis Wildern Cassin)

Q. Did Mr. White at any time between the time you stopped him about a half mile south of Rose Canyon examine the front end of the car?

A. Well, Mr. White was there when I examined the car.

Q. Did he get out of the car when you first stopped him?

A. Yes, sir, when he gave me his identification, he stepped out of the car. [95]

Q. Did he get up and look at the car?

A. He was up to the front end of the car with me, yes, sir.

Q. And when you got to the police station and Sergeant Christian was there, did all three of you, that is, Sergeant Christian, yourself and Mr. White, examine the front end of the car?

A. No, sir. I stood back. The sergeant looked at it and turned around and told me to take the driver inside.

Q. Where was Mr. White at that time?

A. He had gotten out of his car and was standing there.

Q. Whereabouts with relation to the left front fender of the car, if you recall?

A. That I couldn't say. He just stepped out of his car.

Q. Then did you and Mr. White go into the police station? A. Yes, sir.

Q. Did you have a conversation there with him inside the police station? A. Yes, sir.

Q. What occurred at that time?

A. Well, prior to that, when I asked Mr. White where the damage had occurred, he had stated it was at the

(Testimony of Francis Wildern Cassin)

Santa Anita race track that day, and as we went into the police station, Mr. White asked me if I had any objection to his using [96] the phone. I told him, "No, not at all."

We went into the traffic bureau and Mr. White dialed a number, and talked, and hung up. And we were there in the police station, and Mr. White stated, "I know that this damage had been done at the Santa Anita race track, and it was a case of having a parking space large enough, for, say, 10,000 cars, and trying to get 25,000 cars in the parking space."

Q. Then what happened?

A. Well, Mr. White was anxious to get going up to the Grant Hotel, smoked a few cigarettes, went back out into the south entrance of the police station, and about that time Officers Hake and McCreary come rolling in.

Q. I didn't hear you.

A. I say about that time Officers Hake and McCreary come rolling in.

Q. Those two officers were from the California Highway Patrol, were they not?

A. Yes, sir.

Q. What occurred then, when Officers Hake and McCreary arrived?

A. Well, they were driving south on U. S. 101, and made a left turn at Market, apparently to go in the front entrance of the police station, and we waited a minute or so, and they swung off of Harbor Drive and they pulled in, parked north of the motorcycles, got out of the car and came back. [97]

Officer Hake was driving, was on the traffic lane. Officer McCreary come down the sidewalk, and Officer Hake went back to the car, and as he was walking back, he said, "That is the car," and reached in his pocket and



(Testimony of Francis Wildern Cassin)

went up to the car, and after that I don't know. His back was to me. I don't know if he fitted in any of the pieces, or exactly what he did do.

Q. Were there any pictures of the car taken there, between the time when you arrived with Mr. White?

A. Yes, sir, there were pictures taken at the police station.

Q. Where was Mr. White when those pictures were being taken, do you know?

A. He was standing right alongside of me in the archway of the entrance of the police station.

Q. I will show you here a photograph and ask you to examine it and tell me whether or not that is a fair representation of the front end of the Lincoln Zephyr automobile that you have described here in your testimony

A. Yes, sir, that is the car.

Mr. Menzies: I will offer this photograph in evidence and ask that it be marked Exhibit E,—is that right?

The Clerk: D.

Mr. Menzies: —as Exhibit D.

The Clerk: Admitted, your Honor. [98]

The Court: Yes.

The Clerk: Defendants' Exhibit D for the Home Indemnity Company in evidence.

(The document referred to was marked Defendant Home Indemnity Company Exhibit D, and was received in evidence.)

Q. By Mr. Menzies: I show you here another photograph and ask you to examine it and tell me whether or not that is a fair representation of that Lincoln Zephyr that Mr. White was driving that evening.

(Testimony of Francis Wildern Cassin)

Mr. Nourse: So far as the plaintiff is concerned, all of these photographs, and we have examined them, may be received in evidence as a part of the offer.

The Court: Mr. Luce, what is your position?

Mr. Luce: We have no objection to their being received.

The Court: Mr. Lonergan?

Mr. Lonergan: Your Honor, I would like to have them briefly identified.

The Court: Yes.

Mr. Nourse: You might identify as to when they were taken.

Mr. Menzies: These were taken, Mr. Nourse, by Mr. Harper several days after the accident. The exact day I do not know.

We will offer this photograph, which is a full-length side view of the left side of the car, and ask that it be [99] marked as Exhibit E.

The Clerk: Defendant Home Indemnity Company's Exhibit E in evidence.

(The document referred to was marked Defendant Home Indemnity Company's Exhibit E, and was received in evidence.)

Q. By Mr. Menzies: I show you here a full length view of the right-hand side of that Zephyr, and ask you if that is a fair representation of that automobile at the time you first saw it.

A. I didn't get on that side at all.

Mr. Menzies: You didn't get on the right side. Do you have any objection to that?

Mr. Nourse: No.

(Testimony of Francis Wildern Cassin)

Mr. Menzies: We will connect it up with other witnesses. That is the right-hand side.

The Clerk: That will be Defendant Home Indemnity Company's Exhibit F in evidence.

(The document referred to was marked Defendant Home Indemnity Company's Exhibit F, and was received in evidence.)

Q. By Mr. Menzies: I show you a rear view of the car, with the license plate, and ask you if that is a fair representation of the rear of the car at the time you first saw it. A. Yes, sir. [100]

Mr. Menzies: We will offer that in evidence.

The Clerk: That will be Defendant Home Indemnity Company's Exhibit G in evidence.

(The document referred to was marked Defendant Home Indemnity Company's Exhibit G, and was received in evidence.)

Q. By Mr. Menzies: I show you a close-up of the left front fender of that same Lincoln Zephyr, and ask you to examine it and tell me whether or not that is a fair representation of the fender. A. Not the light.

Q. Not the light. What difference is there in the light?

A. When I saw the light, the reflector was still in it, and there was a piece of a bulb.

Q. Inside? A. Yes, sir.

Mr. Nourse: You mean the bulb itself was broken so there was nothing to light up there?

The Witness: Yes, sir, and the piece. The bulb was still in there.

(Testimony of Francis Wildern Cassin)

Mr. Menzies: We will offer this picture in evidence as Defendant's Exhibit H.

The Clerk: Defendant's Exhibit H for the Home Indemnity Company in evidence. [101]

(The document referred to was marked Defendant Home Indemnity Company's Exhibit H, and was received in evidence.)

Q. By Mr. Menzies: I show you here another photograph, showing the upper portion of the left front fender of that Lincoln Zephyr, and ask you to examine it and tell me whether or not that is a fair representation of the condition of that fender. A. Yes, sir.

Mr. Menzies: We will offer this in evidence.

The Clerk: Defendant Home Indemnity Company's Exhibit I, in evidence.

(The document referred to was marked Defendant Home Indemnity Company's Exhibit I, and was received in evidence.)

Q. By Mr. Menzies: I show you here another photograph of the left side of the hood of that Lincoln Zephyr, and ask you whether or not that is a fair representation of a portion of the hood, showing some dents, at the time you first saw it.

A. I couldn't say to that. I know there was a dent on the hood.

Q. But you don't identify it from that picture?

A. No, sir.

Q. Very well. Is the same true of the other view here, showing a portion of the hood? [102]

A. Yes, sir.

(Testimony of Francis Wildern Cassin)

The Court: I notice, Mr. Menzies, that in Defendant's Exhibit I there is a note, "Textile scratches," with an arrow. Is that a part of the exhibit?

Mr. Menzies: I will connect that up with the witness who took the pictures and who made the examination.

You may examine.

### Cross Examination

By Mr. Nourse:

Q. Officer, did Mr. White appear nervous when you spoke to him? A. No, sir.

Q. Perfectly sober? A. Apparently, yes, sir.

Q. Very gentlemanly? A. Yes, sir.

Q. He co-operated with you in every way?

A. Yes, sir.

Q. Now, are you sure that he got out of the car at the place where you first stopped him? A. Positive.

Q. Isn't it a fact that you went up to him, and he sat there in the car and he said, in substance, "Why are you stopping me? I haven't been speeding"?

A. I don't recall the speeding part. He did ask me why [103] I was stopping him.

Q. Didn't you then walk to the front of the car and look at it, and explain to him that you had an order to stop cars that had been in an accident, and his car looked suspicious?

A. That was after I had come back from the front of the car.

Q. From the front end of the car. And he was seated there, when you had this talk with him?

A. No, sir. When I stopped the car, he asked me what I was stopping him for, and I told him he had dam-

(Testimony of Francis Wildern Cassin)

age on the front end of his car, and that I would like to see it. I walked up to the front of the car, looked at the damage, and came back to the driver's side.

Q. He was still seated there?

A. Yes, sir. Mr. White was still seated in the car, and the motor was running.

Q. You then asked him to turn off the motor?

A. Yes, sir.

Q. And he did?                      A. Yes, sir.

Q. Where did he get the license from, the driver's license that he showed you?                      A. Out of a billfold.

Q. And that was in which pocket? [104]

A. That I couldn't recall.

Q. Did he sit there and reach in his pocket?

A. No, sir. He opened the car and stepped out.

Q. And stood there and handed you the license?

A. Yes, sir, and we smoked a cigarette.

Q. You smoked a cigarette together?

A. Yes, sir.

Q. And you used your flashlight right there?

A. Yes, sir.

Q. To examine the license and get his name and number?

A. No, I wouldn't have any recollection of his number. Just to identify him.

Q. You didn't take the number, but just his name?

A. Yes, sir, just to identify him.

Mr. Menzies: I am sorry. I can't hear you.

Q. By Mr. Nourse: Did you make any notes then?

A. None whatsoever.



(Testimony of Francis Wildern Cassin)

Q. None whatsoever. From the time you stopped him until he started on to drive, how long do you think you were there?

A. Well, it might have been 10 or 12 minutes, 15 minutes.

Q. You didn't have a two-way radio on your car?

A. No, sir.

Mr. Nourse: If I may, I would like to read the officer's testimony given at the coroner's inquest, your Honor. [105]

You have a copy of it, Mr. Menzies.

Mr. Menzies: What page, please, Mr. Nourse?

Mr. Nourse: Page 147. I would like to read it, not because he said anything different, but as to what he didn't say at that time. I think the court could draw some very proper inferences, in view of the other testimony given.

The Court: Proceed.

Mr. Nourse: If I may sit here and read it from here, rather than show it to the witness?

The Court: Yes.

Mr. Nourse: This comes after he had described having had the call, the radio call, and was asked to tell what he had done.

Mr. Menzies: Is that commencing at line 12?

Mr. Nourse: Line 12.

Mr. Menzies: Thank you.

(Testimony of Francis Wildern Cassin)

Mr. Nourse: (Reading):

“Will you tell us where you found it, and about the time you found it, and what your procedure was following that?

“A. The area that I patrol is from Pacific Highway, U. S. 101, to the Ocean, and what is commonly known as Balboa or Garnet, the foot of Rose Canyon, from there south to Fort Rosecrans. I was in the north beach area, when an all cars pick-up 480 came [106] out, a large sedan, dark maroon, south from Solano Beach. I immediately proceeded across Garnet to U. S. 101. I was at the intersection. There was one car that came out of the canyon with one light, a Willys-Knight, pulled into the service station, the General Petroleum. I don't know how long I was sitting at the intersection, it was a short period of time, it could have been one minute, or three minutes, I noticed a car proceeding south out of the Canyon. I waited until that car came down to the intersection. I noticed a large sedan, a Lincoln Zephyr, traveling south towards San Diego. I kicked over my motorcycle and proceeded after the car, and I as a approached the rear of the car, I noticed a Nevada license. I let the car get out on the open way, or the straightaway. I pulled up alongside of the car, and asked the driver to pull into the shoulder of the roadway, dropped back to the rear of the car, snapped on my red light, and in the meantime, the driver proceeded to the shoulder and came to a stop. I parked my motorcycle. I tried to determine how many were in the car, I only saw the one person, that was the driver. I walked alongside of the car. The first thing was the driver asked me what I was stopping him for. I said,

(Testimony of Francis Wildern Cassin)

‘You have some damage on the left front of your car, and a headlight [107] out. Do you mind if I examine it?’ He said, ‘Not at all.’ I walked up to the front end of the car. There was a dented in left headlight. I walked back to the driver, and asked him to turn off his ignition, which he did. I asked him for his operator’s license which he opened the door and stepped out and handed me the driver’s license. I identified the person—the identification, rather, that the person gave me was George White. The gentleman again asked me what I was stopping him for. I told him that there had been a hit and run accident up north, at Solano Beach; that there was damage to the front of his car, and I would like to inspect it. He said ‘Absolutely, go right ahead.’ I asked the man how far south on U. S. 101 he had driven, and he informed me from Los Angeles. I asked him if he had made any stops, and he said, ‘Yes, I stopped at the Del Mar Hotel to see if I could get a room,’ and I said, ‘Approximately how long ago was that?’ And he said, ‘Twenty or twenty-five minutes.’

“I went up to the front of the car. The left headlight was out. I took my flashlight, with what little beam I had, and played it down on the bumper, looked into the light, and what I termed had the appearance of blood and flesh. I asked the gentleman where—or the defendant— [108]

“Q. Let’s not call him a defendant, he is just the driver.

“A. The driver—I asked the driver where this damage had occurred, and he informed me that it had occurred at the Santa Anita race track that afternoon. I asked him if he had any objections to accompanying me to the police station, and he said no, that he was going in to the Grant

(Testimony of Francis Wildern Cassin)

Hotel; that he would drive up to the Grant Hotel, and I could look at the car all I wanted to up there. So I asked him if he would start his car and start in toward town, which he did. We proceeded in U. S. 101, and there were two motorcycle officers"—

I don't think that the rest is important, your Honor. That is all that he testified to that had anything to do with the scene of the accident.

Q. By Mr. Nourse: Now, you say that when Mr. White parked his car, he parked it facing in which direction? A. At the police station?

Q. Yes. A. North.

Q. Facing north? A. Yes, sir.

Q. That is nosed in to the curb?

A. Parellel to the curb. [109]

Q. Parallel to the curb? A. Parallel to the curb.

Q. And he went in which entrance of the police station?

A. That would be the south entrance. It faces west, the entrance, but it is the south entrance of the police station.

Q. The door faces west? A. Yes, sir.

Q. And what street did you park on?

A. U. S. 101, Pacific Highway.

Q. That is where he parked his car?

A. Yes, sir.

Q. That is an offset to the police station? It isn't a part of the main highway?

A. It is a part of the main highway, yes, sir.

Q. I am thinking of right down by the Coronado station. A. Yes, sir.

(Testimony of Francis Wildern Cassin)

Q. The Bay is which way, in which direction?

A. That would be south.

Q. That would be south? A. Yes, sir.

Q. And the highway runs east and west there?

A. No, sir, north and south. If you are driving south on U. S. 101, you can go right on to the ferry slip.

Q. And this entrance that you went into, then, faced [110] west?

A. Yes, sir, but it is the south entrance of the police station. There is a north entrance and a south entrance.

Q. And was this car parked north or south of this west entrance? A. I would say a little to the south.

Q. A little to the south? A. Yes, sir.

Q. How far? A. I couldn't say.

Q. Two or three car-lengths?

A. No, it wouldn't be that distance. There is room enough for approximately two cars in there, and he swung around and made a U-turn, and swung into the curb, and pulled in there.

Q. Parallel to the curb? A. Yes, sir.

Q. Now, when they took these pictures, the photographers then were facing south?

A. Apparently, yes, sir.

Q. That would mean their backs would be towards this west entrance?

A. No, the west entrance would be like there (indicating), the door would be there, and the car would be parked along the curb here (indicating.) [111]

Q. The car would be parked along the curb like the jury box, and the photographer would be off here?

A. Yes, sir.

(Testimony of Francis Wildern Cassin)

Q. And the officers, the highway officers, were standing there beside the photographer when the pictures were taken?

A. That I couldn't say. There were quite a few officers.

Q. There were quite a number of people there, and not just one photographer? A. Yes, sir.

Q. And Mr. White stood back in the entrance to the police station with you? A. Yes, sir.

Q. Smoking a cigarette? A. Yes, sir.

Mr. Nourse: That is all.

#### Cross Examination

By Mr. Luce:

Q. Officer Cassin, the entrance to the police station at that point is set back from the sidewalk, isn't it?

A. Yes, sir.

Q. About how far would it be from the entrance of the police station proper to the curb where the car was parked? A. Approximately 20 feet.

Q. And Mr. White was standing in the entrance to the [112] police station with you? A. Yes, sir.

Q. This photograph was taken by flashlight, was it not?

A. That I couldn't say. I believe it was, but I don't know.

Mr. Luce: That is all.

The Court: Any questions?

Mr. Lonergan: No questions.

The Court: That is all. Thank you.

Mr. Menzies: May this witness be excused, your Honor, from further attendance?



(Testimony of Francis Wildern Cassin)

The Court: Any objection on the part of the attorneys?

Mr. Nourse: No objection.

Mr. Menzies: And may the witnesses who testified yesterday be excused?

The Court: Any objection on the part of counsel?

Mr. Luce: No, sir.

Mr. Nourse: None.

The Court: They may be excused.

Mr. Nourse: Oh, there is one further question I would like to ask the witness just leaving the stand, and he can answer from there.

Q. By Mr. Nourse: That was a 55-mile zone where you stopped Mr. White, was it? A. Yes, sir. [113]

Mr. Nourse: That is all.

(Witness excused.)

Mr. Menzies: Mr. Hake.

### LUTHER M. HAKE,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Your full name, please?

The Witness: Luther M. Hake.

The Clerk: How do you spell your last name?

The Witness: H-a-k-e.

By Mr. Menzies:

Q. Mr. Hake what is your business or occupation?

A. I am a traffic officer on the California Highway Patrol.

(Testimony of Luther M. Hake)

Q. How long have you been a traffic officer on the California Highway Patrol?

A. A little over 10 years.

Q. During that time you have had occasion to investigate traffic accidents?

A. Yes, sir.

Q. Many or few?

A. A great many.

Q. Now, directing your attention to on or about [114] the 20th of July, 1946, did you investigate an accident that occurred at Solano Beach, California?

A. Yes, sir.

Q. What time of day or night was it that you first commenced your investigation?

A. We received a radio call from our station in San Diego at 10:37 P. M.

Q. Where were you at that time?

A. We were between Oceanside and Carlsbad, California on U.S. 101 highway, headed south.

Q. When you say "we," was there anyone else with you at that time?

A. Yes, sir.

Q. Who?

A. Officer Jack McCreary.

Q. And what did you do after you got this radio call.

A. We proceeded south to the scene of the accident as rapidly as possible.

Q. Where did you find that this accident took place, that you received the call upon?

A. This accident took place on U.S. 101 highway in Solano Beach, approximately 300 feet north of the Rancho Santa Fe intersection.

Q. Was there any pedestrian crosswalk there at that place? [115]

A. No, sir.

Mr. Nourse: You mean at the place of the accident?

Mr. Menzies: Of the accident.

(Testimony of Luther M. Hake)

The Witness: No, sir, there was not.

Q. By Mr. Menzies: What was the condition of the road at that time? A. The pavement was dry.

Q. What was the weather condition, clear or foggy?

A. The weather was clear.

Q. What did you do when you got there?

A. We parked our automobile in a safe place and immediately got out of the car and went to the location where the two people were lying on the east shoulder and saw their condition. We radioed Station O, which is the Oceanside police department and had them dispatch two ambulances to the scene.

Q. What condition were the people in?

A. Both—

Mr. Nourse: That seems to me to be entirely immaterial in this action, your Honor.

The Court: In this action is it material?

Mr. Nourse: It is admitted they died, and it is admitted as a result of this accident.

Mr. Menzies: I think that is probably true.

The Court: I think so.

Q By Mr. Menzies: What did you do after you radioed [116] for the ambulance?

A. I immediately tried to ascertain who the driver of the vehicle that struck these people was.

Q. Were you able to do that?

A. No, sir, not at the time.

Q. Did you make any investigation or take any measurements there at the scene of the accident?

A. Yes, sir.

(Testimony of Luther M. Hake)

Q. What did you do in regard to making that investigation?

A. We endeavored to establish the point of impact.

Q. How?

A. By where the debris from the front part of the vehicle had been thrown in a general southerly direction.

Q. And what did you find there?

A. Found numerous pieces of the headlight lens and numerous pieces of pot metal from the headlight lens, and the headlight grill, and from the parking lamp.

Q. Now, I will show you here a part of the headlight pot metal frame, and ask you to examine it and tell me whether or not you found any portions of this at the scene of the accident, if you can.

Mr. Nourse: Just a minute. I object to that as entirely immaterial in this action. It is admitted by the answer of the Home, and alleged in the complaint, and it is admitted [117] in the answer that it was the Lincoln car driven by Mr. White that struck these people. All that this could have any relevance for would be to identify the car.

Mr. Menzies: No, that is not my purpose, your Honor. The court can perceive from an examination of the metal that when the bodies were struck there must have been terrific force applied to do the damage not only to the bodies but to the car, and that anyone who was driving that car must have known that he was in an accident and must have known that he had hit somebody.

The Court: Overruled. Proceed.

The Witness: I do.

(Testimony of Luther M. Hake)

Q. By Mr. Menzies: Now, which portion of this metal did you find at the scene of the accident?

A. I picked up this smaller section on the right side of this exhibit, and also the large section in the center.

Q. Do you know where the other portion came from, the larger portion that is semi-circular?

A. Yes, sir.

Q. Where did that come from?

A. That was taken from the left headlight grill on this Lincoln sedan.

Q. To whom did you give this material that is mounted on this board after you had picked it up?

A. I gave it to Officer James Brewer of the California [118] Highway Patrol.

Mr. Menzies: Now, I will offer it in evidence, and may I have a stipulation at this time that it may be withdrawn, as the Highway Patrol are very anxious to keep this exhibit, your Honor.

Mr. Nourse: I still renew my objection to its introduction in evidence. I don't think it proves anything unless you are going to prove the strength of the metal and the sound it would make. I think we have had other evidence along this line.

Mr. Menzies: Well, it is quite possible that that will be introduced in evidence, or some testimony along those lines. As a matter of fact, I have witnesses, your Honor, that will throw some light on that very question, on the objection that has been raised.

The Court: In evidence.

Mr. Menzies: And may it be withdrawn at the conclusion of the case and turned over to one of the officers?

(Testimony of Luther M. Hake)

The Court: So ordered.

Mr. Menzies: Thank you, sir.

The Clerk: That is Exhibit J for the Home Indemnity Company.

(The article referred to was marked Defendant Home Indemnity Company Exhibit J, and received in evidence.) [119]

Q. By Mr. Menzies: Now, where did you establish the point of impact?

A. Approximately in the center of the middle lane of the three-lane highway.

Q. What did you find there that indicated the point of impact?

A. There were pieces of dried mud, pieces of glass, pieces of the headlight and grill.

Q. Anything else from the car?

A. Yes, sir, there was a series of skid marks.

Q. Could you tell with relation to the point of impact whether or not that came from the car that had been in the collision there?

A. There were several sets of skid marks, and they couldn't be attributed to any particular automobile. I imagine there was three or four sets of skid marks in approximately the same direction, in that same locality.

Q. Could you tell the court the length of those skid marks that were there?

Mr. Nourse: Just a moment. Your Honor, he said he couldn't connect them up with this accident at all. It would be entirely immaterial.



(Testimony of Luther M. Hake)

Mr. Menzies: It goes to the weight and not to the admissibility. In other words, there is testimony in this record that there was a screeching of brakes, a scream, and the [120] crash.

The Court: How much weight, counsel, would you give to it? You are correct that it goes to the weight, but how much weight would the court give, with the testimony showing that there were a number of skid marks there.

Mr. Menzies: If the court is satisfied there was an application of brakes by the car, in the light of the other witnesses' testimony—

The Court: That is the testimony so far, unless it is disputed, counsel.

Mr. Menzies: Very well.

Q. By Mr. Menzies: Now, did you take any measurements from the point of impact to where either of the two bodies were? A. Yes, sir.

Q. There were bodies there of a man and a woman; isn't that correct? A. Yes, sir.

Q. What did you find to be the distance from the point of impact to where the body of the woman was found?

A. It was approximately 50 feet.

Q. How far was it from the point of impact to where the body of the man was?

A. It was approximately 57 feet.

Q. Now, later did you go to San Diego? [121].

A. Yes, sir.

Q. Did I understand you correctly to say picked up some glass there at the scene of the accident?

A. Yes, sir.

(Testimony of Luther M. Hake)

Q. What did you do with that glass?

A. I put it in an envelope and kept it in my possession until I turned it over to Mr. Ray Pinker.

Q. Of the Los Angeles police department?

A. Of the Los Angeles police department.

Q. And he has it now, so far as you know?

A. Yes, sir.

Q. Now, when you got to San Diego was Officer McCreary with you?      A. Yes, sir.

Q. What did you find there?

A. I found a 1942 Lincoln Zephyr sedan that was parked on 101 Highway, headed north, at the west entrance to the San Diego police station traffic bureau, with several San Diego police officers standing in the vicinity. At that time I asked where the driver of the sedan was, and he was pointed out to me standing over under the archway at the entrance to the traffic bureau.

Q. Then what did you do?

A. I asked the sergeant in charge of the traffic bureau on that evening, that detail, if I could have some pictures [122] taken, to which he replied in the affirmative, and their cameraman showed on the scene in a few minutes to take the photographs that I wanted.

Q. While those photographs were taken, do you know where the defendant George White was?

A. Yes, sir.

Q. Where?

A. He was standing in the same location in which I first saw him.

Q. That is in the archway of the entrance to the police traffic bureau; is that correct?      A. Yes, sir.

(Testimony of Luther M. Hake)

Q. Did you talk to the defendant White at that time and place? A. Yes, sir.

Q. Was anybody else present when you talked to him?

A. Yes, sir.

Q. Who? A. Officer McCreary.

Q. What occurred at that time, when you talked to the defendant White?

A. I asked Mr. White if he were the driver of the automobile parked by the curb, pointing to the same, and he said that he was. I also asked him how the damage to the left front fender was gotten there, and he emphatically said that [123] he knew nothing of an accident.

Q. I am sorry. I didn't hear you.

A. He emphatically said that he knew nothing of any accident, and that he knew nothing of the damage on the front end of his automobile.

Q. Was anything else said at that time?

A. I asked Mr. White where he was coming from, and he said he was coming from Los Angeles to the Grant Hotel in San Diego. I also asked him if there were anyone with him at the time, and he said he made the whole trip by himself. I also asked him if he had stopped any place en route, and he answered, "No."

Q. What else happened?

A. From the evidence of the damage on the car, the fact that Mr. White was the driver of the car, I informed him that he was under arrest for violation of Section 480 of the California Vehicle Code, and Officer McCreary and myself took him to the San Diego County jail and had him booked under those charges.

(Testimony of Luther M. Hake)

Q. Did you have any conversation with Mr. White between the time of the conversation you have just related, and when you booked him in the San Diego County jail?

A. En route to the County jail I questioned him again as to the damage on the front fender.

Q. What did you say to him and what did he say to you, [124] as near as you can recall?

A. I asked Mr. White how anyone could hit an object and leave such damage to the car and not know it, as he contended that he did not know it, and he still denied knowing anything about an accident.

Q. What did he say in that respect, as near as you can recall?

A. Just in those words, "I know nothing of any accident."

Q. I will show you here five color transparencies and ask you to tell me whether or not those five color transparencies are a fair representation of the condition of the Lincoln Zephyr sedan that Mr. White was driving at the time you first saw it.

A. These are the same, with the exception of this one photograph where we have pieces of the grill and the headlight lens, which had been removed by Officer Brewer and myself.

Mr. Menzies: We will offer them in evidence at this time as the defendant Home's exhibit next in order.

The Court: In evidence.

The Clerk: Defendant Home's Exhibit K in evidence.

(The documents referred to were marked Defendant Home Indemnity Company Exhibit K, and received in evidence.)

Mr. Menzies: You may examine. [125]

(Testimony of Luther M. Hake)

Cross Examination

By Mr. Nourse:

Q. I will call the witness' attention to the following testimony given at the Coroner's inquest, and ask you if you did not testify as follows, Mr. Hake,—

Mr. Menzies: Speak just a little louder, Mr. Nourse. It is hard to hear you.

Q. By Mr. Nourse: Question by Mr. Orme:

"Oh, by the way, Mr. Hake, was there any—did you at any time call his attention to the damaged condition of the fender and the hood, or was it called to his attention in your presence, and any questions asked him pertaining to that? Or did he make any explanation as to how or when the damage occurred to the fender and the hood?"

The Court: Referring to Mr. White?

Q. By Mr. Nourse: Mr. White, Yes. (Continuing):

"A. He stated nothing about it.

"Mr. Orme: He had no explanation?

"A. No explanation at that time."

Did you so testify?

The Court: Show the witness the transcript.

(The document was handed to the witness.)

Mr. Nourse: Reading from line 7 and I read through line 16. [126]

The Court: And you may read back of that, if you need to, to connect up the testimony.

Mr. Nourse: Mr. Orme, I may explain to the court, was the deputy district attorney. Mr. Menzies, you were there. Was he not?

Mr. Menzies: I believe he was.

The Witness: That is correct, counsel.

(Testimony of Luther M. Hake)

Mr. Nourse: No further cross examination.

The Court: Mr. Luce?

Mr. Luce: No questions, your Honor.

Mr. Lonergan: None, your Honor.

The Court: That is all. Call your next witness.

(Witness excused.)

Mr. Menzies: Your Honor, may I put a witness on out of order who has to return to Santa Barbara?

The Court: Yes.

Mr. Menzies: Mr. Brewer.

JAMES BREWER,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: James Brewer.

The Clerk: B-r-e-w-e-r? [127]

The Witness: Correct.

By Mr. Menzies:

Q. Mr. Brewer, what is your business or occupation?

A. Traffic officer of the California Highway Patrol.

Q. And what are your duties?

A. Criminologist in the laboratory of the Highway Patrol.

Q. What experience have you had in laboratory work of that character?

A. About nine years with the department.



(Testimony of James Brewer)

Q. What was your preparatory education in regard to that matter?

A. Two years in microscopy, in the study of medicine, biochemistry and associated subjects.

Q. You have specialized in that type of work for how long?

Mr. Nourse: We will stipulate to his qualifications, your Honor.

Mr. Menzies: I think the court would like to hear them.

The Witness: About fourteen years.

Q. By Mr. Menzies: Are you a graduate of any university?

A. I did not graduate.

Q. Now, directing your attention to the defendant Home's Exhibit J in evidence, I will ask you to examine it and tell [128] me whether or not you have ever seen that before.

A. I have. It was delivered to me by Officer Hake.

Q. When?

A. I believe it was the 23rd of July in '46.

Q. 1946? A. Yes.

Q. What did you do with those pieces of metal that are on that Exhibit J?

A. I took them to the laboratory in Sacramento and made an examination of them.

Q. What was the nature and extent of that examination that you made in Sacramento?

A. A comparison with the line of fracture between the two parts, the one recovered from the scene and the other from the car, the car in question.

(Testimony of James Brewer)

Q. What did you find?

A. I find a perfect match in the line of fracture between the two parts.

Q. How did you establish that line of fracture?

Mr. Nourse: Your Honor, I object to that as entirely immaterial. This could only go to prove that this accident occurred, and that is admitted. We are just wasting time and encumbering the record.

The Court: Unless there is some further testimony which this witness is going to give, or some other witness, with [129] reference to the strength of this material and what would be necessary to place it in the condition it is in before the court.

Mr. Nourse: I call your attention to the fact that he is only asked to match it up.

The Court: That would be necessary as a foundation, when to ask a question about the strength, I assume, counsel. Proceed.

Mr. Menzies: I expect to prove that by another witness, your Honor.

The Court: Very well. Proceed.

Q. By Mr. Menzies: Are you able to tell the court the amount of force that it would take to fracture that metal as it is fractured there, as you have matched it up?

A. I am not prepared to estimate the force necessary.

Mr. Menzies: That is all.

The Court: Any questions?

Mr. Nourse: No, your Honor.

Mr. Luce: No questions.

Mr. Lonergan: No questions.

The Court: That is all.

(Witness excused.)

The Court: We will take the morning recess.

(A short recess was taken.)

The Court: You may proceed, gentlemen. [130]

Mr. Nourse: If your Honor please, if I may have the indulgence of court and counsel, I would like to recall Officer Cassin for one question, and also the last witness, Mr. Brewer.

Mr. Menzies: Would you mind taking Mr. Brewer first? He has to return to Santa Barbara.

Mr. Nourse: They both said they had to leave. This will not take very long. I don't care which one I take first. Mr. Brewer.

### JAMES BREWER,

recalled as a witness for the defendant Home Indemnity Company of New York, having been previously sworn, was examined and testified further as follows:

#### Cross Examination (Continued)

By Mr. Nourse:

Q. Mr. Brewer, in addition to examining this light, did you also examine the blood marks on the car?

A. I did.

Q. And you determined they were human blood?

A. I did not make the precipitant test. Ray Pinker made that.

Q. Did you examine and take photographs of the marks on the paint? A. I did.

Q. Did you match those with the clothing of the deceased [131] man?

A. I saw photographs that were prepared by Ray Pinker of the laboratory on the abrasion.

(Testimony of James Brewer)

Q. And you went down and determined that the texture marks on the car were the marks of his clothing?

A. I did not make the examination on it.

Q. You examined the exhibit? A. I did.

Q. Now, you went down to San Diego on the 31st of July, at the time the preliminary hearing was set, at which time Mr. White pleaded guilty? A. Yes, sir.

Q. And you discussed in the office of Mr. Whelan, the District Attorney, your findings and the findings of Mr. Pinker as to blood and clothing marks and the fracture in the headlight? A. I did.

Q. And was Mr. Menzies present?

A. I believe he was.

Mr. Nourse: Thank you. That is all.

#### Redirect Examination

By Mr. Menzies:

Q. That was after the plea of guilty and the preliminary examination there, was it not?

A. Yes, sir. [132]

Mr. Nourse: That is what I asked, that was on July 31st.

Mr. Menzies: But you did not fix the time.

Mr. Nourse: Not before or after the preliminary, no.

Mr. Menzies: Well, it is fixed now. That is all.

May this witness be excused?

The Court: He may be excused.

(Witness excused.)

Mr. Nourse: Mr. Cassin.

FRANCIS WILDERN CASSIN,

recalled as a witness for the defendant Home Indemnity Company of New York, having been previously sworn, was examined and testified further as follows:

Cross Examination (Continued)

By Mr. Nourse:

Q. Showing you Defendant's Exhibit D, Mr. Cassin, and calling your attention to the dent in the hood, on the top of the hood here,— A. Yes, sir.

Q. —or the side of the left top of the hood,—

A. Yes, sir.

Q. —do you have any recollection of seeing that damage when you were there at the point at the mouth of Rose Canyon, where you stopped Mr. White?

A. Yes and no.

Q. Well, mostly yes or mostly no? [133]

A. Well, I saw the car in Rose Canyon. I saw it later up in the garage.

Q. But are you able to say that you noticed that damage there in the dark at the scene of the accident?

A. No, sir.

Q. I don't mean the scene of the accident, but at the place where you stopped him.

A. Yes, sir. I wouldn't swear to that.

Mr. Nourse: That is all.

Mr. Luce: Just a moment.

Q. By Mr. Nourse: Did you talk with Mr. Menzies within two or three days after the accident, or with Mr. Clifton?

A. No, sir, to my knowledge, I didn't talk to those gentlemen until in November; only at the Coroner's inquest, when I was under questioning.

(Testimony of Francis Wildern Cassin)

Q. They were present at the Coroner's inquest?

A. Just Mr. Menzies and John Holt, the attorney.

Q. And Mr. Clifton, was he not there?

A. I didn't recognize him.

Mr. Nourse: Mr. Clifton, will you stand up?

The Witness: The first time I remember seeing that man is when he sat in my home approximately two or three weeks ago.

Mr. Nourse: That is all.

Mr. Luce: No questions. [134]

The Court: That is all.

Mr. Menzies: May this witness be excused from further attendance, your Honor?

The Court: Yes.

(Witness excused.)

Mr. Menzies: May I ask counsel if they will stipulate that if Officer McCreary were called—he is in the court room—his testimony would be the same as that of Officer Hake? That is his partner.

Mr. Nourse: As to what portion of it? All of it?

Mr. Menzies: I assume he was present throughout all of it and heard the conversations.

Mr. Nourse: Let me ask—

Mr. Menzies: I will put him on.

The Court: No, just a minute, counsel.

Mr. Nourse: I would like to ask the officer one question, because you are asking me to stipulate blind.

The Court: Very well.

Mr. Menzies: All right.

Mr. Nourse: Which is the officer?



(Discussion between counsel and Officer McCreary off the record.)

Mr. Nourse: I can't so stipulate, counsel.

Mr. Menzies: Very well. Take the stand. Thank you. [135]

JACK McCREARY,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please.

The Witness: Jack McCreary.

The Clerk: How do you spell that?

The Witness: M-c-C-r-e-a-r-y.

By Mr. Menzies:

Q. What is your business or occupation, Mr. McCreary?

A. Traffic officer, California Highway Patrol.

Q. How long have you been a traffic officer of the California Highway Patrol? A. Twelve years.

Q. Were you with Officer Luther Hake on the 20th of July '47? A. I was, yes.

Q. 1946 I should say. A. Yes.

Mr. Nourse: I am willing to stipulate that the officer's testimony so far as anything that occurred at the scene of the accident would be the same as that of Officer Hake.

Mr. Menzies: Well, let's get at it this way, and maybe we can save some time: [136]

(Testimony of Jack McCreary)

Q. You were present and heard Officer Hake testify?  
A. Yes, sir.

Q. If those same questions were asked you, would you give any different answers?

A. At the south entrance of the San Diego police station Officer Hake was talking to Mr. White a few minutes before I arrived where the two of them were, and I relieved Officer Hake and Officer Cassin of standing by Mr. White, and at that time neither one of us said anything.

Q. When you say "neither one of us" you mean yourself and Mr. White?  
A. And Mr. White, yes, sir.

Q. Did you talk to Mr. White at any time there at the scene of the accident, or anywhere else?

A. En route to the sheriff or the County jail we talked slightly. Mr. White seemed to be concerned—

The Court: Do not make any assumptions.

Q. By Mr. Menzies: What was said?

A. Mr. White said he was worried about his contracts more than anything else.

Q. Anything else, that you can recall?

A. Not at that time, no.

Mr. Menzies: That is all. [137]

#### Cross Examination

By Mr. Nourse:

Q. Was anything said at any time in your presence or was Mr. White shown any damage to the front of his car?

A. The only time, while we were standing at the doorway of the police station, the pictures were taken of the car, and from our position we could see the front of the car and the part of the car that the pictures were taken of.

(Testimony of Jack McCreary)

Q. Weren't the photographers between Mr. White and the portion of the car of which they were taking the pictures?

A. No, sir.

Q. The doorway was north of the car, was it not?

A. That's right.

Q. And you were standing then about northeast of the car?

A. Yes, sir.

Q. And about how far away?

A. Approximately 20 feet.

Q. It is 20 feet from the curb line, is it?

A. That is to the car. The car was right at the curb line.

Q. Right at the curb line. Then the car was directly west of where you were standing?

A. It was slightly southwest.

Q. How much south of that entrance was the car?

[138] A. Oh, approximately seven feet.

Q. Seven feet? A. Yes, sir.

Q. Now, you stated to me a moment ago that there was no conversation with Mr. White relative to the damage to his car in your presence at any time; is that right?

A. That's right.

Q. And you were present in the car when he was taken from the police station to the jail?

A. Yes, sir.

Mr. Nourse: That is all.

#### Redirect Examination

By Mr. Menzies:

Q. Was there any conversation after you got out of the car and before you went into the jail with relation to the damage to the front end of Mr. White's car that you heard?

A. No, sir, there wasn't.

(Testimony of Jack McCreary)

Q. You didn't hear any? A. I didn't hear any?

Mr. Menzies: That is all. Thank you.

The Court: That is all. Thank you. He may be excused.

(Witness excused.) [139]

RAY H. PINKER,

called as a witness by and on behalf of the Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: Ray H. Pinker, P-i-n-k-e-r.

By Mr. Menzies:

Q. Mr. Pinker, what is your business or occupation?

A. Technical director of scientific crime investigation laboratory of the Los Angeles Police Department.

Q. How long have you been connected in that capacity with the Los Angeles Police Department?

Mr. Nourse: We will stipulate to the witness' qualifications.

Mr. Menzies: I think we should have them for the record and for the benefit of the court.

The Witness: For the past 17-1/2 years.

Q. By Mr. Menzies: What has been the nature and extent of your duties there?

A. Briefly, the search for, collection of, examination and preservation of physical evidence, the adaptation of the chemical and physical sciences to the examination of the physical evidence, and the giving of testimony before hear-

(Testimony of Ray H. Pinker)

ings and in court pertaining to the scientific facts as established [140] from such examinations.

Q. What particular training did you have to fit you for that type of work?

A. Two years Department of Chemistry, University of California in Los Angeles; three years Department of Chemistry, University of Southern California in Los Angeles; a year teaching fellow, Department of Chemistry, University of Southern California; a half year research fellow, Department of Chemistry, University of Southern California; two years Arthur R. Maas, a commercial testing laboratory; forensic chemist and chemist for the Los Angeles Police Department since the first of July, 1929.

Q. Now, directing your attention to a photograph here, I will ask you to examine it and tell me whether or not you can determine that is a part of a 1942 Lincoln Zephyr sedan.

A. It appears to be.

Q. I will show you here Defendant's Exhibit E, and ask you to examine it and tell me whether or not you have ever seen that car that is shown in that picture.

A. Yes, I have.

Q. When and where did you first see it?

A. May I refer to my laboratory notes, in order to refresh my recollection as to the date?

Q. You may.

A. It was on the 23rd of July, 1946, and I examined [141] that automobile in the city of San Diego.

Q. I will show you Defendant's Exhibit F, G, H, I, and D, and ask you whether or not they are fair representations of that 1942 Lincoln Zephyr sedan that you examined on the 23rd of July, 1946.

A. They are.

(Testimony of Ray H. Pinker)

Q. What examination did you make of that Lincoln sedan?

A. I made an examination of certain contaminations on the middle part of the sedan. I found fabric brush marks and an imprint of fabric material into the paint. I made measurements of the fabric brush marks. I removed a copy of the fabric imprint by means of Scotch tape. I removed some debris I found on the left front fender, also debris which I found on the bumper on the left side, that is, immediately adjacent to the left front fender. I also took samples of paint which had sheared on this fender, which was present in the form of narrow long strips sheared from the metal itself. I took a sample of that paint. I also removed portions of a sealed beam headlight lens which still remained in the headlight.

Q. Did you make any other examination, other than what you have told us?

A. I also examined clothing allegedly belonging to two victims of the traffic fatality.

Q. Where did you get that clothing? [142]

A. I will again have to refer to my notes.

I received Mr. and Mrs. Lee's shoes, and Mr. Lee's underclothing, socks, handkerchief, shirt and trousers from Sergeant Latourette. I received a Mrs. Lee's slip from Mr. George Harris at the Bailey Mortuary in Oceanside.

Q. You got that personally, did you?

A. I did. I received Mrs. Lee's dress from Officer L. M. Hake.

Q. After you made this examination, what did you do with the material that you had obtained?

A. I have saved it.



(Testimony of Ray H. Pinker)

Q. And then what did you do with it?

A. Well, I made an examination of the clothing. I found contaminating the trousers of Mr. Lee some fragments, tiny fragments of paint. I found in all seven tiny fragments; two on the left rear pocket, four on the outer surface of the fabric, and one inside the left leg. I also found one additional fragment of paint in the shakings contained in the paper that had been used to wrap the clothing.

I made an examination of this paint and compared it with samples of paint I had removed from the vehicle. I found that the paint consisted of two layers, a primer coat bluishgray in color, and an outside polychrome gray paint. I found the fragments I removed from the clothing to be similar to the fragments I took from this vehicle. [143]

I made an examination of the reddish fatty debris which I removed from the left fender and from the bumper. I found this debris to consist of fat tissue and of human blood. Also, in connection with the debris, I removed from the underneath lower edge of the bumper debris which I found to be composed of skin tissue and villous hair. I had procured samples of villous hair from the legs of Mrs. Lee and from the legs of Mr. Lee. I found this villous hair to be more similar to the hair from Mrs. Lee than from Mr. Lee.

I found paint smears on the trousers in the exact center in the back, just below the belt line, and these paint smears on the trousers were bluish-gray in color. On the shirt belonging to Mr. Lee I found paint smears along the right elbow, and paint smears on the tail, the back portion, the lower back portion of the tail of the shirt.

(Testimony of Ray H. Pinker)

I found the fabric weave to be a basket weave. The count of threads running in one direction was 18 to the centimeter. The count in the opposite, the perpendicular direction to the face was 20 to the centimeter. I found that these fabric weaves agreed with the fabric brush marks, within the limits of distortion of the fabric brush marks I had found on the vehicle. I further found that the imprint on the vehicle which I had removed was a basket weave, and the fabric composition in the shirt was also basket weave, having the same dimensions or count. [144]

Q. What else did you do?

A. At the time of my examination of the vehicle there was still remaining on the vehicle some portions of the pot metal. I see some before me here. There was also furnished at the time, I believe by Officer Hake, some pieces of pot metal which had been found at the scene of an accident. I observed Mr. James Brewer of the California Highway Patrol fit two of these pieces which had been found at the scene with pieces still remaining on the vehicle. I personally observed two contiguous fits. I examined the samples of glass that had been brought me by Officer Hake, which had allegedly been found at the scene of an accident. I found the glass to be composed of two types. One type was from a sealed beam headlight lens, and consisted of both lens sections of glass, and reflector sections of glass. I further found additional glass, which were the fragments from two Lincoln Zephyr parking light lenses.

I observed on the vehicle that both left fender parking light lenses had been broken and were missing. I was un-

(Testimony of Ray H. Pinker)

able to fit any of the fragments of glass together contiguously, that is, fragments found at the scene with fragments I found in the vehicle.

Q. Did you do anything else?

A. To the best of my recollection, that is all.

Q. Now, did you examine the metal fender, where the [145] indentations are shown there on the exhibits?

A. Yes, I did.

Q. Can you tell me, if you know, the gauge of that metal?

A. I do not know the gauge of the metal. I observed that it was heavy gauge metal, thick metal, and in one spot it had been torn for a considerable distance.

Q. Now, did you come to any conclusion as a result of your examination and test? A. I did.

Q. And what conclusion did you come to?

A. I came to the conclusion—

Mr. Nourse: That is objected to as entirely immaterial. The only conclusion that could ever have been material was that that car hit the victims, and that is admitted here.

Mr. Menzies: It goes to one question, your Honor, and that is the knowledge of this defendant White.

The Court: I will permit it.

The Witness: It was my opinion, and it is my opinion that the 1942 Lincoln Zephyr, Nevada license No. 331674, forcibly collided with the two victims whose clothing was submitted to me.

Q. By Mr. Menzies: Can you tell the court the amount of force that would be necessary to cause the indentation in that left front fender of that 1942 Zephyr? [146]

(Testimony of Ray H. Pinker)

Mr. Nourse: Objected to as no foundation laid and calling, therefore, for the conclusion of the witness.

The Court: There is no foundation.

Q. By Mr. Menzies: In your work as investigator for the police department in regard to physical evidence, have you had occasion prior to this time to determine the cause of indentations similar to this in other automobiles?

A. I have on numerous occasions during the past 17-1/2 years.

Q. Have you been able to do so?

A. Yes, I have, in many instances.

Q. Are you able to do so in this case? A. Yes.

Q. What, in your opinion, caused it?

A. In my opinion, this damage to the left front fender, the damage to the hood, the damage to the headlight lens and assembly was caused by the vehicle striking the back, the middle back portion of the body of the person wearing Mr. Lee's clothing, who I presume was Mr. Lee.

Q. Now, can you tell the court from your examination of this car whether any part or portion of the body of Mr. Lee came across or on top of the left side of the hood of this Lincoln Zephyr sedan? A. I can.

Q. Will you just tell the court? [147]

A. It is my opinion that the back of the shirt, and the back and elbow area of the right arm of Mr. Lee came over on top of the fender and scraped along the left side of the hood.

Q. How much, if you know, of the body of Mr. Lee was at one time or another resting across the hood?

A. The portion extended from somewhere below the belt line in the rear up to the right shoulder portion. How

(Testimony of Ray H. Pinker)

much more in addition to that, I cannot say. It was at these points where I found paint contaminations on the clothing.

Q. Did you see the body of Mr. Lee? A. I did.

Q. Can you describe the size and approximate weight to the court.

A. No, I cannot, inasmuch as the only portion of the body I examined was the lower limbs, for the purpose of removing hairs from the legs.

Q. Well, didn't you also make an examination of the brain?

A. I did, yes; I was not present at the time the brain was removed, however.

Q. Do you know, and can you tell the court the nature and extent of the force that would have to be applied to cause the damage that you observed on this Lincoln?

Mr. Nourse: Objected to as foundation not laid, and [148] calling for the conclusion of the witness.

The Court: Do you think you have laid a sufficient foundation, counsel?

Mr. Menzies: I believe there is sufficient foundation, yes, your Honor.

Mr. Nourse: That is a matter for a mechanical engineer, and this man is qualified as a chemist.

The Court: I sustain the objection.

Q. By Mr. Menzies: Have you, during the time you have been in the police department, made examinations similar to this one to determine the force that was necessary to produce injuries to the car such as are indicated in the exhibits that are before you there, Mr. Pinker?

Mr. Nourse: Objected to as immaterial.



(Testimony of Ray H. Pinker)

The Court: I will permit it.

The Witness: I have made examinations of motor vehicles, to determine the extent of damage to them, have correlated my observations of the amount and degree of damage with eyewitness description and observation of the accidents in which the suspected vehicles were allegedly involved. I also have observed a number of traffic accidents personally and observed the relative damage done to the respective vehicles.

Q. By Mr. Menzies: Can you tell the court from your examination in this case the approximate amount of force that would be necessary to produce the injuries to the vehicle that [149] are shown by the photographs before you there?

Mr. Nourse: Please answer that question "Yes" or "No."

The Witness: Yes.

Q. By Mr. Menzies: What was it?

Mr. Nourse: Objected to as calling for a conclusion of the witness and no foundation laid for expert testimony to the effect by this witness.

The Court: That goes to the weight. There is some foundation. Let us have your answer.

The Witness: I can only say that the force was relatively great. It is the greatest amount of damage that I have ever observed in 17-½ years of examination of vehicles which were suspected of and by physical evidence proved to have struck human beings.

Mr. Nourse: I will ask that go out as entirely immaterial, and purely a conclusion of the witness, and not



(Testimony of Ray H. Pinker)

based on facts and would be hearsay. It would be absolutely impossible for us to meet that. It isn't based on any scientific fact whatsoever or scientific knowledge. It is the same knowledge that any layman might have that looked at a thing and said, "This is greater than I ever saw before."

The Court: There is some justification for the statement because of the fact that the average layman would not have had the experience. That is the only thing, counsel. I will permit it to stand. [150]

Q. By Mr. Menzies: Upon what do you base that conclusion, Mr. Pinker?

A. Well, my conclusion is based upon my observation of the damage that has been done to his vehicle and my examination of damage done to many other vehicles in past matters which I have had under investigation, where those vehicles have been proved to have struck human beings. The proof has been by physical evidence or by eye-witness observation on the part of some witness.

Mr. Menzies: You may examine.

### Cross Examination

By Mr. Nourse:

Q. The amount of damage that would be done to a piece of metal on an impact with something else would depend upon the weight, would it not, of what it hit?

A. Weight is a factor, yes. Velocity is another.

Q. Yes, velocity, and whether or not there was one blow followed by another? A. I don't believe—

The Court: Successive countacts, you are talking about?

(Testimony of Ray H. Pinker)

Mr. Nourse: Successive contacts.

The Witness: Yes. Of course, the total damage would be the accumulation of all the contacts, whether one contact or multiple contacts.

Q. By Mr. Nourse: Do you know the weight of the Lincoln? [151] A. No, I do not.

Q. The force with which it hit at any number of miles per hour would depend on its weight, would it not?

A. Weight is a factor.

Q. Well, isn't weight plus velocity equal to the total energy that is applied? A. That is true.

Q. You don't know the speed it was traveling, do you?

A. No, I do not.

Q. And you don't know the weight?

A. I can only say the speed was relatively great.

Q. Was the weight relatively great, too?

A. Well, weight, of course, is a constant factor.

Q. I know it is a constant factor, but you don't know what it was, do you? A. No, I don't.

Mr. Nourse: That is all.

The Court: Any other questions?

Mr. Luce: No questions.

Mr. Lonergan: No questions.

The Court: That is all.

Mr. Menzies: May this witness be excused?

Mr. Nourse: Oh, there is one question I forgot.

(Testimony of Ray H. Pinker)

Q. By Mr. Nourse: Did you go down to the preliminary hearing on July 31st? [152]

A. Yes, I did.

Q. Did you participate in the conference which Mr. Holt—do you know Mr. John Holt. A. Yes.

Q. —and this attorney, Mr. Menzies, had?

A. Mr. Menzies was not present. Mr. Holt was present, and Mr. Brewer was present, and a number of members of the California Highway Patrol, and some members of the District Attorney's staff, including the District Attorney.

Q. But you don't remember Mr. Menzies being there?

A. Mr. Menzies was not present in the District Attorney's office during the conference.

Q. Or was—will you stand up, Mr. Clinton—was this gentleman there?

A. No. I saw both gentlemen about the building.

Q. Did you discuss your findings with either of them?

A. No, I did not.

Mr. Nourse: That is all.

The Witness: Am I excused, your Honor?

The Court: Yes.

The Witness: Thank you.

(Witness excused.)

The Court: We will recess until 2:00 o'clock.

(Whereupon, at 11:55 o'clock a. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [153]

Los Angeles, California, Tuesday, January 21, 1947.  
2:00 P. M.

Mr Nourse: Your Honor please, counsel has kindly consented that I may call a witness out of order. I would like to call Mr. John Holt, an attorney at this bar, who has kindly come up from San Diego to give his evidence, if I may call him now.

The Court: Mr. Nourse, can you give me some idea about how long your side will take?

Mr. Nourse: I stated to the clerk and to counsel here that—they think they will have about one hour of direct examination this afternoon, and I think that it will take us at least an hour and a half to put on our rebuttal, so I do not see how we can finish, with argument, before tomorrow noon. Mr. Menzies I believe agrees with my statement.

Mr. Menzies: I think probably we can finish taking testimony this afternoon.

The Court: I have another case following this and that is the reason I ask.

(Another case called.)

The Court: Now, call your witness, Mr. Nourse.

Mr. Nourse: Mr. Holt, will you take the stand.  
please? [154]

JOHN T. HOLT

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you please state your full name?

The Witness: John T. Holt.

By Mr. Nourse:

Q. What is your business or profession, Mr. Holt?

A. I am an attorney at law.

Q. You are admitted to practice in all of the State Courts of California? A. Yes, sir.

Q. And in the United States District Court for this judicial district? A. That is quite right.

Q. When were you admitted?

A. To the practice of law in the State of California in the year 1930. I think it was 1931 in the Federal Court.

Q. Since then you have been practicing in San Diego?

A. Yes, sir.

Q. Now, were you employed by George White to represent him in the matter of the charges filed against him by the people of the State of California, charging him with involuntary manslaughter and hit and run driving, that is, Section 480 of the Vehicle Code, arising out of an accident which [155] occurred on July 20, 1946.

A. Yes, sir.

Q. When were you employed, if you remember?

A. It was on the morning of the inquest, I believe, or the evening before; one or the other.

Q. You did attend the inquest?

A. Yes, I did.

(Testimony of John T. Holt)

Q. After that inquest did you have a conversation with Mr. Menzies, Thomas Menzies?

A. Yes, sir, I had numerous conversations with him.

Q. Now, I am directing your attention to the conversation that you had with him in which the subject of George White's falling asleep on his trip on July 20th to San Diego was mentioned?

A. You mean the first one?

Q. The first one. Can you fix the date of that?

A. I can't fix the exact date, but it was between the 26th and the 31st of July, before a plea of guilty was entered.

Q. All right. Was that in person or on the telephone?

A. That was on the telephone.

Q. Will you state in substance what was said between you and Mr. Menzies?

A. We discussed several subjects. One of them was the gathering of testimony, and Mr. Menzies stated he would be kind enough to get a transcript of a statement made by a [156] Mrs. Hawkins, who was at the scene of the accident or on the scene shortly thereafter, and her statement contained a statement that this girl, who was unfortunately killed, had stated before she died, words to this effect, that she and her husband were just drunk, that is how it happened. And while we talked along, I said in effect, I can't remember the exact words, but I do remember the effect of it, I said, "Tom, George says that the next day after he made the first statement to you he told you he fell asleep, and he wants to correct that transcript when it is ready." And Mr. Menzies said, "Well, it isn't ready yet." And I said, "Well, all right."



(Testimony of John T. Holt)

Then we just went ahead and talked, and talked more about the accident.

Q. Now, have you said all that was said about his falling asleep?

A. At that particular moment in that first conversation, yes, but there was another conversation before the preliminary, a long one, in which we talked at great length about that and other matters concerning the plea of guilty.

Q. When did the next conversation occur? I call your attention to the fact that the plea of guilty was entered on July 31, 1946. When did the next conversation occur with relation to that date?

A. Oh, it was three or four days before that anyhow, [157] when we talked about it at length.

Q. Was that over the telephone?

A. That, too, was over the telephone, yes.

Q. Will you state what was said by you and by Mr. Menzies?

A. Do you want the whole conversation?

Q. Yes, give us, as near as you can recollect, the substance of the whole conversation.

A. I think Mr. Menzies may have been at the U. S. Grant or might have been in Los Angeles. I am not clear on that. But I told him that from all the evidence that he and I both had seen, that it was my best opinion that George White ought to plead guilty to hit-run. I told him that from what George had told me, he felt he must have hit these people but didn't know it, that he had fallen asleep, and that is when it must have happened; that from all the testimony that was turning up, and from the evidence that was obvious in the case at that time, his

(Testimony of John T. Holt)

car must have hit those people, and George told me while he didn't know he hit them, that he should have known it, that it must have happened while he fell asleep, and that he felt he was morally responsible. And I told Mr. Menzies, "I told George it was hard for me to believe his story," and I said, "I told him if he would make a clean breast of it and tell Judge Shell that he had hit them and became panic-stricken, which seemed the natural thing, I though it would [158] be much easier for him, if that were the truth." And I said, in effect, to Mr. Menzies, "Tom, it sounds like he is telling the truth. It could have happened." I said, "The reason I say that, George told me if they send him to San Quentin for it, he wasn't going to say he hit those people, because he didn't know he hit them, but he did feel he must have hit them when he had fallen asleep."

Then I said, "By the way, how about that transcript? He wants to change that statement."

And Tom said, "Oh, no," he said, "we have got him over a barrel. He didn't tell us he fell asleep in the written statement."

I said, "He told you the next day."

He said, "That doesn't make any difference. You haven't read the case," and he gave me some case, which I didn't read, although I might have become better versed in the law if I had, and I said, "Tom, I haven't read the case, but you don't mean to tell me if you aren't prejudiced at all, and if you knew a particular phase after the first statement was given, and the first statement is given when a man is excited and shocked, that you wouldn't permit him to change it?"

(Testimony of John T. Holt)

He said, "I have got the law, and you better read it."

I said, "I am not going to read the case. I am not handling the case civilly," and I said, "I don't think you can get away with it. How could you possibly be prejudiced [159] if the correction in the statement was made within 24 hours?"

He said, "We are standing on the written statement."

I said, "I don't think you can get away with it, but maybe you can. That is your end of it."

He said, "I wish you wouldn't plead him guilty. I think you ought to think about it. It ought to affect your policy."

I said, "I do appreciate your co-operating with me and giving me evidence up to now but I can't go with you any further. We have come to a fork in the road. I have to protect this man's liberty and do the best I can for him. He is in a very difficult position, and it is my guess he ought to plead guilty." I said, "I think he will be in very grave danger if he does not, because a jury won't believe him if he doesn't, and if they convict him after spending the money on a trial, I think he will go to prison."

He said, "I don't think you ought to plead him."

I said, "I have to use my own judgment, and you take your end of it, and I will take care of mine." That was about the end of the conversation before the preliminary hearing.

Q. Was the case he called your attention to the case of Valladoa v. Firemen's Fund in 13 Cal. (2d)?

A. I can't tell you that. Tom knew it. I didn't take it down because I told him I wasn't handling the civil case. I told him, "I would surely like to read a case that would

(Testimony of John T. Holt)

say they could get out from under that that easily," and we [160] sort of argued around it.

Q. At that time what charges were pending against Mr. White?      A. Manslaughter and hit-run.

Q. Two counts of manslaughter, were there not?

A. Quite right.

Q. Wasn't there some statement made by you relative to the fact that you could make a deal with the District Attorney if he pleaded guilty on the hit and run?

A. Those weren't the exact words, but what I told him was that the District Attorney stated if he would plead guilty to hit and run, he would dismiss the manslaughter cases, and also would not oppose probation. I had discussed with Mr. Whelan, the District Attorney, that Mr. White was a man of fine reputation and of unimpeachable character. I further stated to Menzies, "One of the reasons which impelled me to plead him guilty was that oftentimes very notable people or very prominent people before a jury did not get a fair trial, that people were prejudiced against them, and I was very concerned about that."

Mr. Menzies said, "Well, when you plead guilty, you are admitting negligence."

I said, "Not at all. This is hit-run. Negligence is not one of the elements of the crime." And we discussed that. Mr. Menzies felt differently than I did about it though, I [161] will say. He said, "I think it will." I said, "I think it won't." And that is the way that was left.

That is about all I remember of the particular conversation.

(Testimony of John T. Holt)

Q. Now, you attended the arraignment and made the plea for Mr. White? A. Yes, Sir.

Q. Mr. Menzies and Mr. Clifton were there in the court room, were they, at that time?

A. Mr. Menzies was there, and there was some very quiet, nice chap from Los Angeles with him. I think he was his stenographer.

Q. Will you stand up, Mr. Clifton?

A. That is the gentleman right there.

Q. After that did you go on to the District Attorney's office, after that plea, or on that day?

A. I went to the District Attorney's office before the plea and afterwards. There was—

Q. Well, were you present there when the evidence was brought forth showing there was human flesh and blood on the car, and imprints of the male deceased's, Mr. Lee's, shirt on the car?

A. May I correct you as to the time when that was?

Q. Yes.

A. That was before the plea was entered. We were waiting [162] to proceed with the preliminary examination, and the District Attorney asked me to come to his office, and the officers were waiting there, I think Mr. Hake was there, and the experts were there, and I noticed this exhibit here, which is No. J, apparently, in this case. That was also there, but they had a little glass over it, a magnifying glass, and that all was shown to us.

Q. And the officers explained the meaning of what they had there?

A. Yes, and they didn't need to. It was a little obvious. But they did, and we had a very sane discussion about it.



(Testimony of John T. Holt)

Q. Was Mr. Menzies there with you during that time?

A. I don't want to swear to it. I don't know. He might have been. I was directing my attention very particularly to the District Attorney and these witnesses. Mr. Menzies may have been or may not. I can't state that.

Q. Well, did you relate to Mr. Menzies and discuss with Mr. Menzies after that and on that day, what these officers had shown you?

A. Yes, we discussed that.

Q. I mean, this evidence as to blood on the car?

A. Yes; yes.

Q. And the break in the pot metal and the imprint of cloth on the car? Did you discuss that with Mr. Menzies? [163]

A. Yes, and he discussed with me something before that, that an examination had been made of the brain of the man to determine whether or not there was alcohol involved. His information was, and it later proved to be correct, that one of the gentlemen from Los Angeles—I would know his name if it were repeated—

Q. Pinker?

A. That's right, Mr. Ray Pinker. He stated at this meeting with the officers, when Mr. Hake was there, that an examination had been made of the brain, I remember particularly, because the newspaper reporters were quite interested, and I asked him quite a few questions about what effect alcohol on the blood streams and on the brain would show under proper examination.

Q. Do you recollect what the showing was,—what they said it showed?



(Testimony of John T. Holt)

Mr. Lonergan: I think, your Honor, we will object to that as immaterial in this case.

Mr. Nourse: I think it is, your Honor. I didn't ask Mr. Pinker about it on that account. I will withdraw the question.

Q. By Mr. Nourse: Have you given all that you can remember that occurred there on the day of the plea of guilty as to your discussion with Mr. Menzies or with Mr. Clifton?

A. We again discussed that day the proposition that I [164] was to receive the testimony or the statement of this lady, a Mrs. Hawkins. I wanted it very badly, as I told Mr. Menzies, for the probation department, to show that actually there was no manslaughter case at all, that this was not a compromise where we had pleaded guilty to hit-run, and that a greater charge of which he was accused was dismissed for that reason, and I wanted him to know there was contributory negligence.

Q. You did get a dismissal of the manslaughter charges?

The Court: Will you read that question?

(The question was read.)

The Witness: A. Yes. I wanted to show the mitigating circumstances surrounding the whole situation.

Q. By Mr. Nourse: But you had already at that time made your deal with the District Attorney?

A. Oh, yes, yes, but the probation hearing hadn't been had, you see. That was a matter to be presented to the probation officer.

(Testimony of John T. Holt)

Q. Anything else that you remember?

A. I should correct my last statement. I know that contributory negligence is no defense to manslaughter, but I wanted the mitigating circumstances, of course, to be before the probation department.

Mr. Nourse: I wish to interrupt, your Honor, in order that I may proceed with this witness, to offer the following portion of the admission of the Home Indemnity Company. [165] I mean plaintiff's request for admissions to defendant Home Indemnity Company No. I and Exhibit A annexed to that request, which is referred to in Interrogatory No. 1, and the Home's answer to that. I wish to offer that in evidence as our next exhibit in order.

The Court: You want to read it, you mean?

Mr. Nourse: I am just going to take it up with the witness.

The Court: Just state what it is.

Mr. Nourse: Exhibit A is an answer that was tendered. I will state the substance of the admission. It is that this answer, which is Exhibit A to the request for admissions, is the answer prepared by Mr. Menzies for the signature and verification of George White, and which he, George White, refused to verify, and they have admitted that that is the answer.

The Clerk: Do you wish that to have a number, your Honor?

The Court: Yes.

The Clerk: That will be Plaintiff's Exhibit No. 12.

(The document referred to was marked Plaintiff's Exhibit No. 12, and was received in evidence.)

(Testimony of John T. Holt)

Mr. Nourse: I next offer our request for admissions, that is, the Plaintiff's request for admission No. 7 and Exhibit D annexed to that request for admission, and the Home's answer to that request, which is their answer No. 7. That is [166] the answer, your Honor, which was prepared by Mr. Menzies in the Michael Lee, et al. v. George White, et al. case, and which was tendered for the verification of George White, and which he refused to sign, in accordance with the admissions. I would like to offer that as our next exhibit in order.

The Court: Admitted.

The Clerk: That will be Plaintiff's Exhibit No. 13.

(The document referred to was marked Plaintiff's Exhibit No. 13, and was received in evidence.)

Mr. Nourse: May I, instead of taking the court's file, just use my copies in examining the witness.

The Court: Yes.

Q. By Mr. Nourse: Mr. Holt, I call your attention to what are these exhibits, namely Plaintiff's Exhibits 12 and 13, which are Exhibits A and D in this document which I am showing you here, and I will ask you to examine them.

A. Yes, I have looked at them.

Q. You remember that those are answers brought you by Mr. White, which had been delivered to him by Mr. Menzies?

A. I don't so recollect. I can see if I have them. I can see if I have the ones which were sent to me.

(Testimony of John T. Holt)

Q. Well, now, to refresh your recollection, there were two sets of answers, the ones which you prepared, and the ones which Mr. Menzies prepared.

A. Oh, yes, I remember that. [167]

Q. This is the one that denies the accident in one case, and the other is the one which denies the accident in the other.

Mr. Nourse: Excuse me, your Honor, for lowering my voice. I am explaining to the witness the allegations so that he can more readily identify the instruments.

The Witness: May I see the allegation of the complaint, Paragraph 2? I think this is what I was looking for.

Q. By Mr. Nourse: If you will refer to Exhibit C.

A. Yes, I think I remember this all right. Yes, go ahead. I think I am all right on it.

Q. You do recollect Mr. White or Mr. Menzies, I am not sure which, bringing you two answers?

A. Oh, very well. I remember that.

Q. Prior to that time, the time those were brought to you, had you had a conversation with Mr. Menzies relative to what kind of an answer Mr. White could verify?

A. Yes.

Q. Was that over the phone or personally?

A. Over the phone.

Q. Will you state the substance of that?

A. We discussed this matter of whether or not Mr. White was jeopardizing his position under the policy and I told him, "Mr. Menzies, he could not deny under all these facts, as I now believe them to be, that he had struck these people, but [168] could honestly deny that

(Testimony of John T. Holt)

he knew he had struck them. That is as far as the man could go."

Q. Then when these answers, Exhibits 12 and 13, were brought to you, did you give Mr. White any advice as to whether or not he should sign them?

A. Oh, yes, I told him not to sign them.

Q. Did you thereafter prepare answers?

A. Yes, sir.

Q. I will show you now Plaintiff's Exhibit 2. That is the document that has a "B" tab on it in the papers I am showing you, and Exhibit F, or E, rather, and it is in this record Exhibit 4. That is "F" in the document before you, and I ask you if these answers are the answers which you prepared?

A. If they are not, they are of the same substance as those I prepared.

Q. Now, you mailed the answers you prepared to Mr. Menzies? A. Yes, sir.

Q. And that was on what date?

A. May I refer to my file?

Q. Yes. A. August 23, 1946.

Q. Can you find that letter of August 23rd?

Mr. Nourse: The copy of that letter has been received in evidence here and marked Exhibit what, Mr. Luce? [169]

The Clerk: I can probably find it.

Mr. Luce: Exhibit No. 8.

(Testimony of John T. Holt)

Q. By Mr. Nourse: Exhibit 8. I am showing you the exhibit here. This is a true copy of the letter you wrote to Mr. Menzies?

A. I am looking at a true copy that is in my file rather than reading yours, if that is all right. This is my office copy.

Q. You did mail them with this letter, Plaintiff's Exhibit 8, to Mr. Menzies?

A. Under the custom of my office, I told one of my girls to do so.

Q. You dictated the letter? A. Yes, sir.

Mr. Menzies: Paul, I think that is Exhibit 4, if it is the answer.

Mr. Nourse: I called it Exhibit 4, I think, Mr. Menzies.

Mr. Menzies: I am sorry, I didn't hear you.

Q. By Mr. Nourse: Now, after mailing those back, did you have any further conversations with Mr. Menzies, or any correspondence with him?

A. Yes, sir.

Q. Which was it? A conversation?

A. I certainly had correspondence, because I have his return letter to me in my file here, if you are interested [170] in it.

Q. You are now referring to a letter which is Exhibit A to the Answer of Home Indemnity Company of New York to request of plaintiff for admissions, and Exhibit 9 in this record. Showing you this letter which is Exhibit 9 in this record, you received that reply?

A. On or about—it was shortly after August 26th. It is dated August 26, 1946.



(Testimony of John T. Holt)

Mr. Nourse: Now, I will offer this in evidence. It will be easier to find. It is a duplicate of the former one.

The Court: Of Exhibit 9?

Mr. Nourse: Yes.

The Clerk: That will be Plaintiff's Exhibit No. 14.

(The document referred to was marked Plaintiff's Exhibit No. 14, and was received in evidence.)

Mr. Menzies: What is the date of that?

Mr. Nourse: It is August 26. It is the letter you did not date when you attached it to your admissions.

Q. By Mr. Nourse: Did you reply to that?

A. I replied, if I remember correctly, by telegram. I received the letter, I believe, on the 27th, and if my memory serves me correctly I replied by means of a wire to Mr. Menzies.

Q. Is this a copy of the wire you sent in,—

A. Yes, sir.

Q. —as of that date? [171]

A. Yes, sir.

Mr. Nourse: I offer it as our next exhibit in order.

The Court: In evidence.

The Clerk: Plaintiff's Exhibit No. 15.

(The document referred to was marked Plaintiff's Exhibit No. 15, and was received in evidence.)

Mr. Nourse: I will read the wire to your Honor. May I have the letter of the 26th?

The Witness: I don't have that. The clerk has it.

Mr. Luce: It is in evidence.

Mr. Nourse: It is in evidence, yes.

The Witness: Here is a copy of it.

(Testimony of John T. Holt)

Mr. Nourse: I will read this so that your Honor will get the context. It has been read before. It is a letter to Mr. John T. Holt from Mr. Menzies under date of August 26, 1946:

"This will acknowledge receipt of your letter of August 23rd, together with the enclosures.

"I am returning herewith the original answer in Lee against White, the original answer in Fitzgerald against White, and am retaining a copy for my files.

"Please be advised that the answer in Fitzgerald against White was due on the 22nd of August.

"I take it from your letter that you are now representing Mr. White in the above-mentioned civil [172] matters.

"I gather from your letter that your client has made inconsistent statements to you as well as to us and in view of all the circumstances surrounding this matter, the Company denies liability in both of these cases."

The last exhibit offered, the telegram, is as follows:

It is addressed to Mr. Menzies, day letter, under date of August 27, 1946:

"As I have told you and written you over and over I do not and will not represent Mr. White in the civil cases. He has not made inconsistent statements to me or to you. Your behaviour is shocking in the case and borders on the unethical.

"John T. Holt, Attorney-at-law, 1115 San Diego Trust & Savings Building, San Diego, California."

Q. By Mr. Nourse: Was there any later exchange of correspondence between you and Mr. Menzies?

A. I think so. What was the date of that last telegram, please?

(Testimony of John T. Holt)

Q. The 27th.

A. I wish to correct that answer. I was confused. But there is another telegram I had sent him on August 20th. I believe that was the last communication by means of letter or wire. [173]

Q. I show a copy of a telegram. Was that sent by you to Mr. Menzies? A. Yes, sir.

Mr. Nourse: I offer it as our next exhibit in order.

The Court: Read it.

Mr. Nourse: It reads as follows:

“August 20th, 1946

“DAY LETTER

“Thomas P. Menzies,

“548 So. Spring St.,

“Los Angeles, Calif.

“As I told you I refuse to accept any responsibility in the Civil cases against George White. Mr. White is willing and has always been willing to execute truthful answers to the cases at your request. He states he has repeatedly told you that he fell asleep but that you persist in disregarding his statement. This is to put you on notice that I am not representing Mr. White in the Civil cases.”

The Clerk: That is Plaintiff's Exhibit No. 16 in evidence.

(The document referred to was marked Plaintiff's Exhibit No. 16, and was received in evidence.)

(Testimony of John T. Holt)

Q. By Mr. Nourse: Now, when the answer which Mr. White had verified, and which you had prepared and verified and sent to Mr. Menzies were returned to you, I believe with his [174] letter of the 26th?

A. I believe that's right.

Q. The 26th? A. Yes.

Q. —what was done with them?

A. They were in my office for about a day or two, and Mr. Menzies called by telephone, and I didn't talk with him, but as a result of the telephone call my secretary, Miss Shaughnessy, returned those answers to Mr. Menzies, if I am correctly informed. I should state that is based on hearsay.

Q. Based on the practice in your office and which your office records show?

A. No, that wouldn't be the practice in my office. Tom and I had gotten a little hot over the thing, and I just refused to talk to him.

Mr. Menzies: There isn't any question about that. We admit we got them back.

Mr. Nourse: You got them back?

Mr. Menzies: Oh, Yes.

Mr. Nourse: You may cross-examine.

#### Cross Examination

By Mr. Menzies:

Q. Now, Mr. Holt, with respect to your handling the matter for Mr. White, you were only handling the criminal proceeding; is that right? [175]

A. That is right Mr. Menzies.

(Testimony of John T. Holt)

Q. And when we had our first conversation in relation to the statements that Mr. White had given us, I told you he had denied to us that he ever been in an accident, didn't I?

A. Your statement was that he denied that he had hit these people.

Q. And also that he had not been involved in any traffic accident; is that right?

A. You said that is what he had stated in that first statement that was given.

Q. That is right?

A. That's right, Mr. Menzies.

Q. Then you told me that he told you, and that you had come to the conclusion that he must have been asleep and might have hit them while he was asleep, that that was the only explanation that was possible; isn't that correct?

A. That isn't quite correct. The first time we had—I want to answer your question directly. Are you talking now about the first time we talked about him falling asleep and correcting his statement?

Q. Yes. When was that? When do you recall that was?

A. It was within anywhere from three to five days after that preliminary examination.

Mr. Nourse: The preliminary examination?

The Witness: Not the preliminary; the Coroner's inquest. [176]

(Testimony of John T. Holt)

Q. By Mr. Menzies: Would this refresh your recollection: Wasn't it on or about Monday, the 29th of July?

A. No, we talked—wait a minute. Let me take a look here.

Q. It was on the long distance telephone?

A. I talked to you at the U. S. Grant before that about it.

Q. When?

A. Within the next day or two, I think. You were up and down.

Q. What day was it?

A. I can't tell you, Mr. Menzies. I know it was before the preliminary examination, and a few days after the Coroner's inquest.

Q. Well, the Coroner's inquest was on the 23rd, wasn't it? A. That's correct.

Q. What day after that was it?

A. I can't possibly tell you. I don't know which day it was.

Q. Well, would this refresh your recollection, if I told you that we left San Diego the day, or, the morning following the Coroner's inquest?

A. No, it doesn't help my recollection, because I know it was sometime between the Coroner's inquest and when he [177] pleaded guilty, and I can't tell you what day. I didn't make any notation.

Q. Well, would this refresh your recollection: in the telephone conversation, and we will say it was the 29th, which was a Monday—

A. That doesn't help me, but go ahead.

Q. —there was a call, and I have forgotten whether you called me or I called you, and at that time the ques-



(Testimony of John T. Holt)

tion came up that Mr. White had intimated that he might enter a plea of guilty.

A. I didn't say anything like that. I discussed it.

Q. No. Didn't I call your attention to that fact?

A. You and I headed right into it, and we talked very pointedly about this plea of guilty, and I talked to you about his correcting this statement of falling asleep.

Q. You are positive that happened?

A. Oh, yes.

Q. Where did it happen?

A. Over the telephone.

Q. Did that conversation take place in San Diego or between Los Angeles and San Diego?

A. It couldn't have been between Los Angeles and San Diego. I was in San Diego at my telephone, and I was talking to you, and whether you were in Los Angeles or at the U. S. Grant, I can't be positive. [178]

Q. And in that conversation you told me that you weren't interested in the insurance angle of the case, and that you couldn't represent Mr. White on that line, that you had enough to do in the criminal proceeding, didn't you?

A. No, you have the two conversations mixed. That was the later conversation. I talked to you before then.

Q. Well, do you recall telling me that on or about the 29th of July on the telephone?

A. That was not what I said. When you asked me, or suggested to me that I shouldn't plead him guilty and go ahead and try this out, I said we had come to a parting of the ways, you had to protect your side of it, but I was primarily interested in this man's liberty, and was going to use my best judgment.

(Testimony of John T. Holt)

Q. And you said you were not interested in the insurance and you did not represent Mr. White in so far as the insurance was concerned?

A. Oh, that is quite right.

Q. And you did not represent him, as a matter of fact, in those insurance cases?

A. You say I did, or did not?

Q. You did not?

A. I did not, that's right.

Q. And you never did at any time?

A. Only to this extent, that I drew the answers to try [179] to protect the matters that have been referred to here.

Q. And that was all?

A. And that was all, and so stated at the time to you.

Q. Do you recall in that conversation, or a subsequent one, I am not sure which, when you inquired about Mrs. Hawkins' statement, and that I told you we would get it for you?

A. You had told me that personally, Mr. Menzies, once before the preliminary, and on the day of the preliminary, and over the telephone, and you did it, as I remember. You provided it for me.

Q. And I also told you, did I not, that Mr. White had told us that the damage to the car had occurred at the Hollywood race track?

A. That is not as I remember it. As I remember it, the statement was made that Mr. White said some damage was done to the front of his car at the Hollywood race track, but that he had not examined it. That is as I remember the statement.

(Testimony of John T. Holt)

Q. But you do remember that subject being brought up? A. Oh, yes, of course.

Q. You recall that in that conversation I told you that might be the story that he had given you, but he had given us a statement under oath denying that?

Mr. Nourse: Denying what?

Mr. Menzies: That he had been involved in an accident. [180]

The Witness: No, I don't remember that, Mr. Menzies. I remember you saying that he had stated to you that he was in no accident on the highway, so far as he knew, but we discussed the matter of falling asleep, and that it could have happened at that time.

Q. By Mr. Menzies: In that conversation isn't it a fact that I told you that he had given us a sworn statement that he had not been involved in any accident?

A. That's right, and then we discussed about him wanting to correct his statement.

Q. And I told you that he had never mentioned that to us? A. About falling asleep?

Q. Yes.

A. I am sorry, I will have to disagree with you very much on that, because I know you stated to me—

Q. You said—

Mr. Nourse: Let the witness finish his answer.

Q. By Mr. Menzies: Go ahead and finish your answer.

A. I am sorry. I didn't mean to interrupt. I should have let you finish.

Q. Go ahead. I interrupted you.

A. You told me that on the first statement that you took from him that he had not mentioned it, and I called

(Testimony of John T. Holt)

your attention to the fact that he had spoken about him correcting [181] his statement, and having told me. It was about the 24th. That is when we had a long discussion about it, you saying you were going to hold him to the written statement and—

Q. And I told you he had not told us that?

A. No, sir.

Q. You don't recall that?

A. No, sir. I recall a part of the statement. You said that was not under oath, and I said you could not do that.

Q. I told you regardless of what he told you, he was not under oath at that time, and he was under oath when he gave us the statement; do you recall that?

A. I recall this, which is a slight variation. You said at the first time he made the statement he was under oath, and the statement he made the next day was not under oath, and you were holding him to the one under oath. I said, "What difference does it make, as long as it was shortly afterwards, and the first one was made when he was suffering from shock and was excited, and how could you be prejudiced by that?" And you then cited a case to me.

Q. And I told you it destroyed any possibility of a defense there, that if he pleaded guilty to the hit and run, that that element of it would be admissible, that the plea of guilty would be admissible in the civil actions?

A. That is what you told me, and you also said it would [182] be an admission of negligence, and I said, no, it would not, because that was not an element in hit-run.

Mr. Menzies: That is all.

(Testimony of John T. Holt)

Redirect Examination

By Mr. Nourse:

Q. Just a moment, Mr. Holt. Counsel has asked you if you were appearing for Mr. White in the civil actions, he calls it in the insurance matters? A. Yes, sir.

Q. In what capacity were you acting when you told him about Mr. White's having fallen asleep and believing he had hit the people while asleep and that he wanted to correct his statement?

Mr. Menzies: Just a minute. I want to object to that on the ground it is argumentative and calls for an opinion and conclusion of the witness. That is the question the court has to decide.

The Court: Who he was representing?

Mr. Menzies: In what capacity he was representing him?

The Court: In view of the questioning so far, I think it is proper. I think it is not up to the court to determine who he was representing. Proceed.

The Witness: I was representing him in the criminal matter, and Mr. White had complained to me that he was not given the opportunity to correct his statement, and what should [183] be done about it. I said I would talk to Mr. Menzies about it, and I talked to him as I have stated.

Q. Did you talk to him on that occasion at the request of Mr. White?

A. Yes, sir. Mr. White talked to me in my office about it.

Mr. Nourse: That is all.

Mr. Menzies: That is all.

(Testimony of John T. Holt)

The Witness: May I be excused, to return to San Diego?

The Court: Certainly.

The Witness: Thank you very much.

(Witness excused.)

Mr. Nourse: That is all. Thank you for your courtesy, Mr. Menzies, in permitting me to call him out of order.

Mr. Menzies: I will call Mr. Harper.

WILLIAM W. HARPER,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: William W. Harper.

The Clerk: How do you spell your last name?

The Witness: H-a-r-p-e-r. [184]

By Mr. Menzies:

Q. What is your occupation, Mr. Harper?

A. I am a consulting physicist.

Q. What is the work of a consulting physicist?

A. In my particular case I am engaged in the application of physics and the methods of applying physics to all types of criminal and civil investigations and examinations.



(Testimony of William W. Harper)

Q. What preparatory study have you had for your profession?

A. Well, I had two years at the University of California, Los Angeles, and four years at the California Institute of Technology, at Pasadena.

Q. Were you connected with any of the police departments of this State?

A. For seven years after leaving Cal. Tech. I was connected with the Pasadena police department.

Q. And were you connected with any governmental agency?

A. For three years, during the war, I was connected with the Navy Department.

Q. In what capacity?

A. In technical investigations.

Q. Were you assigned to any particular branch of the Navy?  
A. Intelligence, yes, sir.

Q. During the time that you have been practicing your [185] profession, have you had occasion to investigate traffic accidents and damages, physical damages to automobiles?  
A. Yes, I have.

Q. Did you make an investigation of one 1942 Lincoln Zephyr sedan, with a Nevada license, at my request?

A. Yes, I did.

Q. When did you make that examination?

A. That was made on July 27, 1946.

Q. And where?  
A. In San Diego.

Q. Did you take any photographs as a result of your examination of the car?  
A. Yes, I did.

(Testimony of William W. Harper)

Q. I will show you here two photographs that have not been offered in evidence, and ask you whether or not you took those photographs.

A. Yes, I did take them.

Q. What portion of that 1942 Lincoln sedan did you take?

A. These photographs disclose deformations and scratches on the left hood of the vehicle in question.

Q. Did you also take photographs that are marked in evidence as Exhibits D, E, F, G, H and I?

A. Yes, I did.

Q. Did you take these five colored photographs or color transparencies? Do you have them here? [186]

A. Perhaps these (indicating) are the ones.

Q. Yes, they are. They are marked Exhibit K.

A. Yes.

Q. Now, assuming that that 1942 Lincoln sedan had collided with two human beings, a man and a woman, on the highway, was traveling at a speed of within the lawful limit of 40 to 50 miles an hour, and that prior to the impact there was a screeching of brakes, and a scream, that the woman was knocked approximately 50 feet, that is the body, and the man was knocked about 57 feet, that the car was then seen to pull over to the right of the road, straighten out and travel down the highway at a slower rate of speed, are you in a position to tell the court whether or not such an impact would be felt by the driver of the car?

A. Yes, I am.

Mr. Nourse: Just a moment. Your Honor, that is not the subject of expert testimony. No foundation has been laid for expert testimony on that ground. Here is a consulting physicist. He is not a neurologist, he is not

(Testimony of William W. Harper)

a doctor. He is no more qualified to say whether it would be felt or whether it would awaken him or not but if he wants, I will say a person awake in the car would feel a jolt that would do that damage. I will stipulate that, if that is the only purpose of it.

Mr. Menzies: You stipulate that a man couldn't go through that kind of an accident without knowing it? [187]

Mr. Nourse: No, I won't stipulate that, and I don't think any witness can testify to it. I object to this proffered evidence on that ground; that there is no foundation laid and it is not the subject of expert testimony. It is the very thing to be decided by the court when it hears all of the evidence as to what happened on this occasion.

Mr. Menzies: I am trying to aid the court in reaching whatever conclusion he may.

The Court: I think the physical facts are proper, that the court can hear the facts and judge this particular case. I will sustain the objection.

Q. By Mr. Menzies: Now, can you tell the court whether or not an impact, such as illustrated here in the photographs, would release any sound?

A. Yes, I can.

Q. And would it? A. Yes, it would.

Q. Can you tell the volume of that sound?

Mr. Nourse: Measured how?

Mr. Menzies: That is what I will ask him after a while.

The Court: Will you repeat that question, please?

(The question was read.)

(Testimony of William W. Harper)

The Court: I do not believe that you have enough facts to ask a hypothetical question. I think he should know the kind of a car, if he is familiar with that car, and the weight [188] of the car, and the approximate speed, and so forth. I think that ought to be in your questions on that.

Q. By Mr. Menzies: Do you know the approximate weight of a 1942 Lincoln Zephyr?

A. Yes, it is about 4100 pounds.

Q. Do you know the gauge of the metal on the left front fender of a 1942 Lincoln Zephyr, particularly the car involved in this accident?

A. It is 16-gauge, as I recall; 16-gauge.

Q. How thick is that in inches?

A. I would have to estimate it without a table available. I think it is in the vicinity of around twenty-five-thousandths, but I may be wrong by quite a bit. I am just guessing at it.

Mr. Nourse: Twenty-five-thousandths of an inch thick?

The Witness: Yes.

Q. By Mr. Menzies: Can you tell the court the approximate amount of force or energy that it would take to depress that fender such as is illustrated in the photographs there that have been offered in evidence, before you?

A. I don't quite understand your question, Mr. Menzies. Do you mean to make a deformation of the metal under laboratory conditions, or do you mean to produce this particular deformation?

Q. Under laboratory conditions, to depress it, or under [189] the conditions that existed in this case, where two

(Testimony of William W. Harper)

bodies were struck by a car traveling somewhere between 40 and 50 miles an hour.

A. I could assign a lower limit for it only. I could not give the exact value.

Q. What would be the lower value?

A. In my opinion, the force required to produce deformation like that would be at least 2,000 pounds.

Q. When you say 2,000 pounds, what do you mean by that?

A. Well, 2,000 pounds of force is 2,000 pounds of weight. I mean that if a force or a weight of 2,000 pounds acts on a fender which is rigidly held, you will begin to get deformations of the metal which will approximate the deformation on this fender.

Q. When you say 2,000 pounds, does that mean those 2,000 pounds are dropped any distance to produce that? Is it foot pounds, or what?

A. Well, weight is not energy, and it would not be foot pounds. It is the actual force acting against the fender.

Mr. Nourse: It would not be. What would it be?

The Witness: It is the actual force acting against the fender, I think I said.

Q. By Mr. Menzies: What do you mean by that?

A. Well, I think I answered that. By the force would mean the same as a weight pressing against the fender and [190] causing it to lose any shape which it happened to have prior to the test.

Q. Assuming that that object or car was traveling somewhere between 40 and 50 miles an hour and hit two human bodies, for the sake of the illustration, say weigh-

(Testimony of William W. Harper)

ing 200 pounds, what amount of energy would you expect to find had been released there?

A. May I have the question again, please?

(The question was read.)

Mr. Nourse: You mean 200 pounds each?

Mr. Menzies: A total of 200 pounds.

Mr. Nourse: Objected to as assuming facts not in evidence.

The Court: There has been no evidence of the weight of the bodies. I will permit the witness to answer and if it isn't connected up I will have to disregard the testimony. You may answer it.

The Witness: The energy of the vehicle itself at speeds between 40 and 50 miles an hour would be within the range of 250 and 350 thousand foot pounds, and the energy acquired by the bodies as a result of the impact would be in the range of from 10 to 20 thousand foot pounds if the aggregate weight was 200 pounds.

Q. By Mr. Menzies: Would any of that force or energy be transmitted to anyone operating the car? [191]

A. Necessarily so, yes, sir.

Q. In what way would that be done?

A. By direct mechanical contact. The shock resulting from the impact between the vehicle and the object or bodies in the road would be mechanically transmitted to any occupants of the vehicle.

Q. What, if anything, would occur, if you know, with the occupants of the vehicle? Would he remain stationary, or be thrown forward, or back?

A. The occupant or any object within the car would tend to maintain its motion and the sudden disturbance



(Testimony of William W. Harper)

produced by the impact would have the final result of throwing bodies or objects in the car forward.

Q. What would happen to any object struck, if you know?

A. Well, it would have—it would acquire a forward velocity and energy in the direction the car was traveling which struck it.

Q. If a car struck an object with the left side of it, would it have a tendency to cause the car to swerve one way or another?

A. Yes, it would cause the car to turn toward the corner upon which it had been struck.

Q. That would be true whether it hit a human body or hit another object? A. That is right [192]

Q. So long as that object was a movable object?

A. It would not have to be movable.

Q. Then, if you know, what would occur?

A. To what?

Q. According to the laws of gravity or motion?

A. What would occur?

The Court: I don't think the question is clear, counsel.

Mr. Menzies: To the car.

Mr. Nourse: You mean what goes up must come down?

Mr. Menzies: You are right.

Mr. Nourse: I guess we will stipulate to that.

The Court: All right. Proceed to the next question.

Q. By Mr. Menzies: What effect would a blow such as caused the damage that is illustrated in those photographs have on the direction of the car?

A. It would change the direction.

(Testimony of William W. Harper)

Q. And once the direction was changed, would there be a tendency of the car to follow that direction?

A. Yes, unless it was acted on by other forces.

Q. And when you say "other forces," what do you mean?

A. Well, a subsequent collision with some other object, either movable or fixed, or by human control.

Mr. Menzies: That is all. [193]

### Cross Examination

By Mr. Nourse:

Q. Mr. Harper, you say you were employed by Mr. Menzies to go to San Diego to examine this car?

A. Yes, sir.

Q. I take it, you were employed before the 27th?

The Court: Before what?

Q. By Mr. Nourse: Before the 27th of July, 1946?

A. Well, I believe my employment perhaps technically began on the 26th, because I left for San Diego on the 26th.

Q. Did anybody go with you?      A. My wife.

Q. I mean, anyone from the Home Indemnity?

A. No.

Q. What were your instructions?

A. To make an examination of an automobile bearing a certain license number and involved in this traffic accident.

Q. To determine what?

A. To determine the extent of the physical damage, and then at that time to determine whether or not the car had collided with some fixed object or with another vehicle, or with human beings.

(Testimony of William W. Harper)

Q. And you made the examination for that purpose?

A. Well, for those purposes.

Q. Yes, for those purposes? [194]

A. That's right.

Q. Did you have anything to do with determining whether or not the marks on the car disclose whether it was human beings, whether it was human bodies, or what?

A. I did pursue that examination for a few days subsequent to my return from San Diego and had partially completed the identification of certain human material on the car.

Q. What conclusions did you come to as to whether or not this car had hit human beings?

A. I concluded that it had.

Q. Did you conclude that from the nature of the damage to the car?

A. From the nature of the damage combined with the microscopic evidence which I found on the car.

Q. Did you report that to the Home Indemnity, your conclusion?

A. Yes, I did. I reported to Mr. Menzies.

Q. When did you make that report?

A. Well, I made a verbal report, as I recall, to Mr. Menzies a few days after I returned from San Diego.

Q. Before the 31st, anyway?

A. Before the 31st of July?

Q. Yes.

A. I don't believe so, no. I think it was subsequent to the first of August that I made even a verbal report. [195]

Q. But you did then? A. Yes.

Q. Did you make a written report? A. Yes.

(Testimony of William W. Harper)

Q. How long before your written report had you made your oral report?

A. Oh, I believe it was several weeks.

Q. Give me your best estimate of it.

A. Well, that is my estimate at this time without actually looking it up.

Mr. Nourse: Can you give me his written report, so that we can get the approximate date of his oral report?

Mr. Menzies: I think so.

Mr. Nourse: While counsel is looking for that, I will proceed, your Honor. I would like to have it though.

Mr. Menzies: I will try to find it for you, Paul.

Q. By Mr. Nourse: Now, you say that it would take about 2,000 pounds to do this damage? That was your direct testimony?

A. No, that isn't my direct testimony, I don't believe.

Mr. Nourse: I would like to have that read, your Honor. Have you got your notes?

Mr. Menzies: He didn't say "foot pounds."

The Court: Mr. Witness, what did you mean? You used the weight, 2,000 pounds. What did you mean by that? [196]

The Witness: Well, my testimony, as I recall it, was that it would be my opinion that at least 2,000 pounds of force would be required to approximate the deformation that was seen in these photographs, or the damage which I saw on the car. The actual value required to reproduce the same damage might run much higher than that. I assigned what in my opinion would be a minimum limit required to produce that.

Mr. Menzies: That was August 5th, the date of that report.

(Testimony of William W. Harper)

Q. By Mr. Nourse: All right. Now, let's assume that. How many foot pounds of energy,—how fast would a car weighing—4100 pounds, you say? A. Yes.

Q. —have to be traveling to generate 2,000 foot pounds of energy?

A. Well, a car would generate 2,000 foot pounds of energy at a very low speed. The 2,000 foot pounds of energy is not 2,000 pounds of force.

Q. All right. Was it 2,000 pounds of force that you were talking about— A. I am talking about—

Q. —that caused this deformation?

A. I am talking about a static load, you might say, of 2,000 pounds, being the minimum required to produce the approximate deformation of this type. That is not energy. [197]

Q. 2,000 pounds of what? Energy or—

A. 2,000 pounds of force.

Q. What is the difference between force and energy?

A. Well, there is a great deal of difference. Energy involves weight or force as a factor. Force is best defined by Newton's laws of motion.

Q. That is foot pounds, then, isn't it?

A. Force?

Q. Yes.

A. No, force is pounds. Energy is foot pounds.

Q. Well, if I put a 10-pound weight on here, what have I got? A. You have 10 pounds of force.

Q. Just resting on there? A. That's right.

(Testimony of William W. Harper)

Q. So that you think that 2,000 pounds, or, that it would take 2,000 pounds resting on that fender to distort it?

A. Well, to that approximate degree, yes. That would be a static type of test.

Q. Now, how far would you have to drop a 100-pound weight on to there to get that same amount of force?

A. Twenty feet.

Q. Twenty feet. So that if you had something that collided—if that car was traveling, then a car would have to be traveling how fast, a car weighing 4100 pounds would [198] have to be going how fast to cause that damage if it hit something weight 100 pounds?

A. Well, you mean a pedestrian, in other words, something that is on the surface of the ground, the earth?

Q. Yes, only attached by gravity to the ground.

A. In my opinion, it would take velocities between 40 and 60 miles of the vehicle to produce that damage with a collision with a pedestrian.

Q. I did not ask that. I asked you how much it would take to produce 2,000 pounds of force.

A. Well, you can't relate—

Q. You mean—

Mr. Menzies: Just let him finish his answer.

The Witness: You can't relate energy of a vehicle in foot pounds to a 2,000-pound force. It is like equating apples to bananas. They are two different things.

Q. By Mr. Nourse: Then there is no way you can determine how fast the vehicle was going to cause a force of 2,000 pounds when it hits an object weighing 100 pounds?

A. Well, not along that route, you can't, no.



(Testimony of William W. Harper)

Q. Now, when you say that this would cause the vehicle to turn to the left when it is hit on the left front fender, that would depend a great deal, would it not, upon the mass of the object it hit?

A. Well, the extent of the turn would depend upon the [199] mass, but the turn would be to the left, and the greater the bulk or mass of the object struck and the greater the dimensions of the vehicle, of course, the greater the magnitude of the turn would be.

Q. Also, it would depend upon the rigidity of the front of that vehicle, wouldn't it?

A. Well, no, I don't believe it would. I think all automobiles are sufficiently rigid and enough of one integrated piece of mechanism so that you can't say one automobile is less rigid than another from the standpoint of changing direction upon collision.

Q. That is caused then by the forcing back,—any change of direction has to be something enough to force back the left side of the car while the right-hand side goes ahead; isn't that right?

A. That is one way of looking at it. That is approximately correct, yes.

Q. So if the whole thing is a rigid frame, the tendency is far the heavier object weighing 4,000 pounds, or 4100 pounds, hitting one weighing 100 pounds, to go on along in the same direction, isn't it?

A. No; no.

Q. The component forces are there, are they not?

A. Yes, but there is a resistive force due to the 100 pound object you are speaking about, which is directed not along [200] the center, what may be the center of gravity of the car, but off to the left of it, and even though it is relatively small as compared with the for-

(Testimony of William W. Harper)

ward momentum of the car, it will, of course, cause the car to swerve or turn to the left.

Mr. Menzies: The date of that report is August 5th.

Mr. Nourse: August 5th?

Mr. Menzies: That is right.

Q. By Mr. Nourse: That was when your written report was made. So is it your memory that you made an oral report a week or two before that to Mr. Menzies? Is that right? I don't want to get you back before the accident occurred, and two weeks would take you back before it occurred.

A. No, I went down on the night of the 27th, I mean the 26th, and the day of the 27th of July, and several days passed before I had completed my laboratory examination, and I was of the opinion that another week or two had transpired before my written report was in, but whatever the date is there, that is the date.

Q. But some date before the written report you made your oral report? A. That is correct, yes.

Q. And you did advise them that, in your opinion, this car had collided with a human body?

A. That is correct, yes, sir.

Q. Did you advise them then that you thought the bodies [201] were of these two people who had been killed at Solano Beach?

A. No, I did not. I had not had an opportunity to examine the bodies of the victims or the clothing which they had worn, and I had not progressed in my investigation far enough to express an opinion that those people were the particular people involved in this collision.

Q. But you did advise them, then, prior to your written report that the nature of the indentations showed there

(Testimony of William W. Harper)

that it had not been a solid object that the car hit, didn't you? A. That is correct, yes, sir.

Mr. Menzies: That is all.

Q. By Mr. Luce: Just a question or two, Mr. Harper. When the car struck a human being or a pedestrian on the left-hand side, you say it would cause the car to deflect to the left? A. Yes.

Q. You do not mean to say it would continue on that same course until controlled by human hands, do you?

A. No, I would say it would continue on that same course until it was acted upon by some internal force.

Q. It might be acted upon by some internal force like the steering knuckles, or the wheels, or tires, or something like that? A. No. [202]

Q. It would not change the direction?

A. The only thing internal to the car that would cause the car to change direction would be someone operating the steering wheel or falling against it or touching it, doing something to change it.

Q. But suppose, Mr. Harper, you started a car down the highway with nobody in it, would you say that car would continue on that same straight course that it starts on?

A. Well, according to Newton's first law of motion, it will. It will continue on the same path until some external force operates on it. From a practical standpoint, if you start a car down a street without a driver, it is going to fall short of obeying Newton's first law of motion because there are small imperfections in the road surface, and it may hit a curb, and so it will not follow Newton's first law of motion perfectly. But that is the nature

(Testimony of William W. Harper)

of motion, for that car to continue in a straight line unless acted upon by some external force.

Q. Then what you are talking about is just pure theory, is it not?

A. Well, it is theory that has been in application to engineering work for 200 years. So if that is theory, then it is theory. But we use it in everyday engineering problems.

Q. Forgetting your theory for a moment, you know, Mr. Harper, that a car will not continue in a straight line [203] ordinarily when it is turned loose without any driver handling the wheel on any road, don't you?

A. You get it on a flat, smooth surface and I won't agree with you, because in the absence of any external forces it will continue in a straight line after its motion has been started in that direction.

Q. Well, take any highway that you ever saw or know anything about, would you say that the car would continue in a straight line?

A. No, sir, not on any average highway, it won't.

Q. It is apt to go from one side to the other?

A. Yes, it can go bouncing from one curb to another curb, or from one lamp post to another.

Q. Without any lamp posts or curb lines, it won't continue in a straight line?

A. Well, unless there are external forces, or someone changing the direction—

Q. There will be external forces acting on it without the human hand at the wheel, won't there?

A. Objects in the road, yes.

(Testimony of William W. Harper)

Q. Not the surface on the road, but just the road's contour?

A. That will; the contour of the road can introduce forces, or if the road is super-elevated.

Q. If there is only a slight elevation, isn't the effect [204] of it directed on the front tires?

A. Yes, if there is any elevation, it will affect it some, and the greater the elevation, the greater the effect the force of it will have in changing the direction of it.

Q. You wouldn't call those objects?

A. They are not obstacles, but the force that is created by the super-elevation of a road or created by a pebble or a rock is a force, an external force operating on the car.

Q. And that will cause it to change direction without a human hand on the car?

A. If they are of sufficient magnitude, the direction will change, unquestionably.

Mr. Luce: That is all.

By Mr. Nourse: Just one further question.

Q. Are you familiar with that highway there?

A. Yes, sir.

Q. That is a crowned highway, that is, the highest point of the surface is at about the center, so that water will run off both ways? A. Yes.

Q. A car left alone there, if its wheels are properly canted, will tend to go down the grade; is that right?

A. Well, I don't know what you mean by "grade."

(Testimony of William W. Harper)

Q. Well, I mean it will go down the slope. If the pavement slopes to the right, the car will tend to go to the right; [205] is that right? A. That's right, yes.

Mr. Nourse: That is all.

Mr. Menzies: That is all.

The Court: That is all.

(Witness excused.)

The Court: We will take our afternoon recess.

(A short recess was taken.)

Mr. Menzies: Your Honor, may I ask the last witness one further question?

The Court: Yes.

#### WILLIAM W. HARPER,

recalled as a witness for the defendant Home Indemnity Company of New York, having been previously sworn, was examined and testified further as follows:

#### Redirect Examination

By Mr. Menzies:

Q. Mr. Harper, Mr. Nourse asked you if a car swung to the right and there was a slight crown in the road, would it continue going that way. Assuming the car came down the highway and struck an object, and it continued to the left, would it continue on going to the left?

A. Until acted on by some external force, yes, sir.

Mr. Menzies: That is all.

Mr. Nourse: That is all.

(Witness excused.) [206]

Mr. Menzies: Dr. Parkin.



DR. VICTOR PARKIN,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your full name, please?

The Witness: Victor Parkin.

The Clerk: P-a-r-k-i-n?

The Witness: That's right.

By Mr. Menzies:

Q. Doctor, what is your profession?

A. Physician and surgeon.

Q. How long have you been practicing that profession?

A. Thirty-four years.

Q. Pardon?

A. Thirty-four or thirty-five years.

Q. Have you specialized in any particular branch of medicine?

A. Yes, sir.

Q. What?

A. Mental and nervous diseases.

Q. Have you specialized in mental and nervous reactions of individuals?

A. Yes, sir. [207]

Q. Now, Doctor, assuming that an automobile weighing approximately 4100 pounds, traveling down the highway at in the neighborhood of 40 or 50 miles an hour struck two human beings, a man and a woman, with the resultant damage to the automobile as shown in Defendant's Exhibit H and Defendant's Exhibit D—

Mr. Menzies: These were not marked. I believe they were offered in evidence, your Honor. I will offer them again. Mr. Harper testified in relation to taking them.

The Court: The clerk has assigned a number to them, starting with D; D, E, F, G, H and I.

(Testimony of Dr. Victor Parkin)

Mr. Menzies: When Mr. Harper was on the stand I thought I offered them.

The Court: Yes, they were offered, and the clerk gave you a number, D, E, F, and so forth.

The Clerk: I think not, your Honor, we had photographs up to H and I, but those were not these. These are new photographs.

Mr. Nourse: What are these? I haven't seen them.

Mr. Menzies: Yes. I showed you those. They are of the hood of the car.

Mr. Menzies: I thought they were all offered, then.

The Clerk: Are they admitted, your Honor?

The Court: Yes.

The Clerk: These will be Defendant Home's Exhibits L and M. [208]

(The documents referred to were marked Defendant Home Indemnity Company Exhibits L and M, and were received in evidence.)

Q. By Mr. Menzies: (Continuing)—could you tell the court whether or not any human being driving the car who passed through a collision such as has been described to you there, and as illustrated by those exhibits, would not know he had struck an object?

Mr. Nourse: If the court please, we object to that as no foundation laid and not a matter for expert testimony.

Mr. Luce: And all the factors are not included in the hypothetical question.

The Court: That is the objection. There are not sufficient facts in the hypothetical question there, counsel.

Mr. Menzies: Very well. I will reframe it.

(Testimony of Dr. Victor Parkin)

Q. By Mr. Menzie: Doctor, assuming that a human being was driving, that is, an adult human being was driving an automobile, a 1941 Lincoln Zephyr that weighed approximately 4100 pounds, on highway 101 in a southerly direction in San Diego County, and was traveling at night at a speed somewhere between 40 and 50 miles an hour, and collided with two human beings, one a man and the other a woman, and knocked the bodies 50 feet in the case of the woman and 57 feet in the case of the man, and the car continued on its course; slowed down, pulled over slightly to the right, and proceeded to leave [209] the scene of the accident. Can you tell whether or not the driver of such a vehicle could go through such an accident without knowing he had struck a human being,—struck some human beings or objects?

Mr. Luce: We object, if the court please, on the ground no proper foundation has been laid and all the factors are not included in the question. I submit, your Honor, that it would depend a whole lot upon the condition of the driver, as to being asleep or awake, to what degree he was asleep or how the sleep had affected him, and numerous factors of that kind.

The Court: Well, that is the issue that the court has before it, and if that is the subject of the expert examination, the objection goes to the weight. I will permit him to answer. You may answer.

The Witness: I believe he could not pass through such an accident without being aware of the accident.

(Testimony of Dr. Victor Parkin)

Q. By Mr. Menzies: Upon what do you base your conclusion that he could not pass through such an accident without being aware of it?

A. Because the automobile that he was driving, having hit an object, in this case assumed to be a human being, with force sufficient to produce the deformation shown in this picture, the force would be transmitted along the car to the seat, and the individual, if he were conscious at the time, [210] would be conscious that the car had struck an object with great force.

Q. Assuming that the driver contended that he was asleep, would such an accident arouse him?

A. In my opinion, it would.

Q. Upon what do you base that opinion?

A. The amount of force; the sound. For instance, for one thing, the noise that would be created by the impact, and the transmission of the impulse to the individual would wake him up, unless he were, of course, very sound asleep or under the influence of drugs or alcohol.

Q. Assuming there was no evidence of either drugs or alcohol, Doctor, would such a blow wake the individual up and drive home the knowledge that he had been in a collision?

A. I would say it would. I have just got to take the common sense view of it, that the man was driving the car at a great rate of speed, and if he had been asleep for more than a few seconds, the car would have departed from the road, so he could not have been asleep for long, or if he were asleep, it was very, very lightly so.

Mr. Menzies: You may examine.

(Testimony of Dr. Victor Parkin)

Cross Examination

By Mr. Nourse:

Q. Doctor, in your experience you find that various individuals react differently; some react quickly and some [211] slowly, do they not? A. That is true, yes.

Q. What? A. That is correct, yes, sir.

Q. And some people fall asleep—you know people who would lie down and be asleep in no time, practically, don't you?

A. There are rare individuals who can lie down and be asleep that way, yes.

Q. And some people waken to full consciousness immediately upon a stimulus? A. They do.

Q. And others come to full consciousness more slowly? A. Correct.

Q. Sometimes it takes at least a second for people to get to full consciousness again after being asleep; is that right?

A. I think that depends upon how long they are asleep and the depth of the sleep.

Q. Well, these individuals that have fallen asleep and have lost consciousness, sometimes it takes as much as a second until they are oriented again?

A. Yes, sir.

Q. Doctor, even with many of them it will take a half a second or more to do that, will it not,—with many [212] individuals?

A. Yes, if you are asleep a space of time is necessary to awaken to full consciousness, yes.

(Testimony of Dr. Victor Parkin)

Q. If you are awakened to full consciousness by shock, such as described here, a stimulus or force, there is apt to be confusion in regaining consciousness, is there not?

A. Yes, if he is asleep, he has to re-orient himself again.

Mr. Nourse: That is all.

Q. By Mr. Luce: Doctor Parkin, you don't know how far a man might drive a car, or a car might proceed with a person asleep at the wheel in a relatively straight line, do you?

A. No, except from personal experience.

Q. Only from your own experience?

A. Yes, I do know that.

Q. But you wouldn't know as to someone else's experience?

A. How far the car might proceed whilst they are asleep without deviating from a straight line?

Q. Yes, a relatively straight line.

A. Well, I think that is just a matter of common experience and knowledge. Anyone who has driven a car knows that.

Q. Well, you couldn't be definite about it, could you?

A. No, sir; it depends upon the car, the crown of the road, the condition of the tires, and various other factors.

Q. For all you know, a person might proceed a half a [213] mile in a car in a relatively straight line and be asleep at the wheel?

A. I think that would be an extremely improbable occurrence. You might on a skating rink and a perfectly smooth surface, but just as has been explained by the witness, Mr. Harper, that Newton's law of motion enters in there and the various components of force.



(Testimony of Dr. Victor Parkin)

Q. I understood him to say that the car would proceed in a straight line.

A. So it would, if there were not any operation of an opposite force.

Q. You are not basing your last answers on your medical training and experience, are you?

A. That?

Q. Yes.

A. No, it goes back to my premedical work.

Mr. Luce: That is all.

Mr. Menzies: That is all.

The Court: That is all.

(Witness excused.)

FRED W. WILKIE,

called as a witness by and on behalf of the Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows: [214]

The Clerk: Will you state your full name, please?

The Witness: Fred W. Wilkie.

The Clerk: How do you spell Wilkie?

The Witness: W-i-l-k-i-e.

The Court: The first name is?

The Clerk: Fred W., your Honor.

By Mr. Menzies:

Q. Mr. Wilkie, what is your business or occupation?

A. Assistant probation officer of San Diego County.

Q. During the course of your official duties as assistant probation officer of San Diego County, did you have occasion to interview the defendant in this case, George White?

A. I did.

(Testimony of Fred W. Wilkie)

Q. Did you make a report of that investigation and conversation with Mr. White to the Superior Court in and for the County of San Diego?

A. The report covered the conversation and other matters taken up in the investigation.

Q. Now, do you recall when you first talked to Mr. White about his application for probation?

A. I think it was on the 6th of August, 1946, the date that he entered his plea in the Superior Court.

Q. Where did that conversation take place?

A. It took place in the San Diego County Probation Office, [215] in the Adult Division.

Q. Was anyone else present in that conversation besides yourself and Mr. White?

A. The conversation was held in a room where there are other officers, but they were merely coming and going; no one sat in on the conversation.

Q. Do you recall what Mr. White said to you and what you said to him at that time?

A. In substance, yes.

Q. Would it help you if you saw your written report, to refresh your recollection as to what transpired there?

A. I think I can recall it. The conversation covered a good many things.

Q. Just tell us what that conversation was, please.

A. In the course of the conversation I questioned Mr. White about many things.

Mr. Nourse: Just a moment.

The Court: Yes.

Mr. Nourse: I am going to object to this, your Honor, as entirely immaterial, unless counsel states that his purpose is either to impeach Mr. White, when called, which

(Testimony of Fred W. Wilkie)

it seems to me is a little out of order, or that what they are going to show is that this information was conveyed to them prior to the time they disclaimed in this matter, because any statement made by White which did not reach the defendant, Home, [216] could not possibly have misled them, and it could not possibly have any connection with his report of this accident or his co-operation with them as an insurer in this case.

Now, if counsel states that he intends to show that this was conveyed to the Home and brought to their attention, or he intends to show that White had made a misstatement through this thing, or it will impeach him, I will have no objection.

The Court: I assume that is the purpose. I can't see any other purpose. Proceed, counsel.

Q. By Mr. Menzies: Just tell us what conversation you had with Mr. White relative to the facts and circumstances surrounding an accident that occurred on or about the 20th of July, 1946, at or near Solano Beach.

A. I asked Mr. White what his recollection of the accident was. Mr. White stated that he assumed that his car, or, I should say, that his car had been definitely connected with the accident in question, and he assumed that he was, therefore, the driver of the car, so-called, and had accordingly entered a plea of guilty, but that he didn't recall any accident taking place and knew nothing of hitting anyone.

I asked Mr. White to explain, and he said that he was asleep, or that he fell asleep while driving his car, and he assumed that if he struck anyone, it happened while he was asleep. I then asked him if he had experienced

(Testimony of Fred W. Wilkie)

drowsiness or sleepiness prior to the time that he actually went to sleep, [217] and he said that he hadn't.

As I recall, I asked him what it was that woke him, and he said that he didn't know for sure what did cause him to wake up. I asked him if he heard anything that resembled a sound of something hitting the car, a thud, or something in the nature of glass breaking or hitting the pavement, or hitting the car. He said he didn't recall hearing anything like that.

I asked him how fast he was traveling just prior to falling asleep, and he said that he rarely drove fast, and that he was traveling at that time at his ordinary rate of speed, about 40 or 45 miles an hour.

I asked Mr. White what the position of his car was on the highway when he became conscious. As I recall, my question was if his car was on either shoulder of the road, or if it was straddling any of the white lines on the pavement, or just where it was situated when he became conscious. And he said it was approximately in the position that it should be normally upon the highway, or in the westerly lane of traffic heading south, that it wasn't in the center lane, or straddling any white line, but just about where it should be on the highway.

I asked him how fast he was traveling when he woke up, and he said that the car was almost at a dead halt, that it was necessary for him to shift into low gear in order to start [218] up again.

I asked him if he stopped anywhere between the scene of the accident and the time that he was stopped by the traffic officer in San Diego to discharge any passengers who might have been with him, and he said that he was traveling alone, and that he didn't discharge anyone.

(Testimony of Fred W. Wilkie)

I asked him if he had observed any of the damage on his car, or if he had noticed that the left headlight was not burning, and he said that he didn't notice that, and he didn't notice any damage.

I asked him if he inspected the car or observed any damage when apprehended, or when stopped by the traffic officer, or later when he arrived at the police station, and he said that he hadn't.

As I recall, he stated that he didn't get out of the car when first stopped by the traffic officer, but that when he drew up to the police station in San Diego, he got out of the right side of the car, and the damage was on the left side; consequently, he didn't see the damage then, but he did see the officers taking the flash light pictures of the car, but he didn't examine it at that time, and actually didn't know what the extent of the damage was until he saw pictures of the car in the paper.

I don't know, but right offhand I think of nothing else concerning the accident itself. [219]

Q. Did you ask him anything about the damage to the front end of the car, as to where that occurred?

A. I asked him about a previous statement which was attributed to him, as having been made to the arresting officers, as to the damage taking place at a race track in Los Angeles, and he said that he had reference to other damage there of a minor nature, but he didn't specify what it was.

Q. Did you ask him what the damage was of a minor nature? A. As I recall, I didn't.

Q. Was anything said by you to Mr. White, in sum or substance or effect, "You know if you will tell the truth, it will be much simpler for you," or words to that



(Testimony of Fred W. Wilkie)

effect, and he told you that, "If the judge and the district attorney were right there, and they would say I would go free if I said I knew I hit people—I said, 'O.K. I hit the people,' but I was lying when I tell you that I knew I hit them"?

A. I recall something of that conversation, but that was a subsequent conversation.

Q. That was a subsequent conversation. How many conversations did you have with Mr. White?

A. I know of two definitely. I think I talked with him by phone once, but nothing important transpired.

Q. Did you have two conversations with Mr. White about the damage to his car and what occurred on the 20th at or near [220] Solano Beach?

A. On about three days before, I believe, the probation hearing—the probation hearing was August 23rd, as I recall, 1946—I asked Mr. White to come to the office at that time because I had some matters I wanted to discuss with him, and it was at that conversation that the matters came up which you have just inquired about.

Q. What brought that subject up?

Mr. Nourse: The subject now is as to the statement about the District Attorney and the Judge being there?

Mr. Menzies: Yes.

The Witness: Well, I advised Mr. White that I had completed what investigation I felt was necessary in the case in order to submit my report to the court, and told him that I couldn't personally accept his story as fully true, and I felt that he was going to run into trouble insofar as convincing the court of his statement, and in his own interest I advised him if he had any changes which he desired to make before the report was submitted, that



(Testimony of Fred W. Wilkie)

that would be the best time to do it. Mr. White replied that the statements which he had previously given were accurate and correct, to the best of his knowledge, and that he could not change them; that if he did, he would be telling a lie then, and I advised him if that were true, I wouldn't want him to change his story.

Q. Now, was your report filed with the Superior Court [221] there in San Diego County in the case of People against White? A. Yes, it was.

Q. It became a part of the record of that proceeding?

A. Yes, sir, a part of it, that is right.

Mr. Menzies: You may examine.

#### Cross Examination

By Mr. Nourse:

Q. Mr. Wilkie, isn't this the substance of what Mr. White said to you on this occasion on the 23rd, and what you said to him,—

A. On the 23rd, I don't recall that.

Q. —or, the second time that you have related here, when you called him into the office and you told him you personally could not believe his story that he had been asleep and didn't know he hit anybody, then didn't you say to him, "I think that if you told the court that you had hit them and become frightened and left, that the court would be more lenient with you than if you tell this story?" I mean the substance or effect of what you said to him, and that you then went on to say, "If that isn't the truth, you had better tell the truth about it now." Isn't that the substance of what you said to him?

A. Well, if I understand you correctly, it is, in part. I told him that I didn't, or I couldn't fully accept his

(Testimony of Fred W. Wilkie)

story and I didn't think the court would fully accept it. [222]

Q. Didn't you tell him you thought the court would be harsher with him in the sentence or on the question of probation if he maintained that story?

A. I did say that, in my opinion, the court couldn't accept it or wouldn't accept it, and in that event if the court felt that he were not telling the truth, it would perhaps be worse for him, yes.

Q. And then didn't he say, "If you brought in the District Attorney, and the Judge, and everybody, and they said, 'Well, if you say you hit these people, you will get off free,' I would tell them, 'Yes, I hit them; but I would also tell you I am telling a lie' "? Isn't that about what he said?

A. I don't recall that. He did say something about—well, let's see—that is a little bit hazy in my mind, but there was some mention made of the fact by Mr. White that regardless of who he had to make the statement to, he couldn't tell any other story than the one he had; otherwise, he would be lying.

Mr. Menzies: That is all.

Mr. Luce: That is all.

Mr. Nourse: That is all.

Mr. Menzies: May this witness be excused, your Honor?

The Court: Any objection, counsel?

(No response.) [223]

The Court: He may be excused.

(Witness excused.)

WILLARD A. RIGLEY,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your full name, please.

The Witness: Willard A. Rigley, R-i-g-l-e-y.

By Mr. Menzies:

Q. Mr. Rigley, what is your business or occupation?

A. Deputy sheriff, San Diego County.

Q. Directing your attention to the 20th day of July, 1946, did you have occasion to investigate an accident at Solano Beach?

A. I did.

Q. Did you observe whether or not there was a man and woman injured as a result of that accident?

A. Yes, sir.

Q. Can you give us the size and approximate weight of the woman?

A. Oh, I would say she was in the neighborhood of 118 pounds.

Q. And the man?

A. I would approximate him at about 160. [224]

Q. You didn't talk to Mr. White at any time about the accident?

A. No, sir, I didn't. I got there shortly—

Mr. Menzies: He has answered the question, I think, your Honor.

The Court: How?

Mr. Nourse: He has answered the question, I think, your Honor. He was asked if he talked to Mr. White, and he said no, and is volunteering some testimony.

(Testimony of Willard A. Rigley)

The Court: Yes.

Mr. Menzies: That is all.

Mr. Nourse: That is all.

The Court: That is all. Thank you.

Mr. Menzies: May this witness be excused?

The Court: Yes.

(Witness excused.)

RAYMOND C. COCHRAN,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: Raymond C. Cochran.

The Clerk: How do you spell your last name?

The Witness: C-o-c-h-r-a-n. [225]

By Mr. Menzies:

Q. Mr. Cochran, what is your business or occupation?

A. I have a service station and garage.

Q. Where? A. At Solano Beach.

Q. Do you own and operate that station?

A. Yes, sir.

Q. Directing your attention to the 20th of July, 1946, were you on duty at your station between 10:00 and 11:00 o'clock on that night?

A. I was. I was checking out. I had turned out my lights.

(Testimony of Raymond C. Cochran)

Q. Did anything unusual happen at that time?

A. I heard a squeal of brakes and I looked out the window and saw a car pull off to the right of the road, and I saw another car come through.

Q. Then what happened?

A. Then I ran outside and watched this car, as he came up.

Q. Which car? The car that had pulled to the right, or the other car?

A. The car that pulled to the right and stopped, and the car that came through.

Mr. Nourse: I will ask that the witness tell just what he saw. [226]

The Witness: The car swerved when I first saw it.

The Court: Now, there are two cars. Which car?

The Witness: This is the southbound car.

Q. By Mr. Menzies: That is the car that came through and didn't stop?

The Witness: That's right, sir.

Q. Was there anything unusual about the appearance of that car, that came through and didn't stop?

A. It had a broken headlight, the left one.

Q. Tell us what you saw the car do.

A. It almost stopped. It slowed down very slow, and just as it came even with my station it speeded up a little bit, and passed on by.

Q. You don't know who was driving that car?

A. I had no way of knowing it.

Q. Do you know what kind of a car it was?

A. Only that it was a Lincoln sedan.

Q. Do you know the color of it?

A. I couldn't tell.

(Testimony of Raymond C. Cochran)

Q. Did you later go up to the scene of the accident?

A. No, I didn't. I heard there were two people killed and I stayed away.

Mr. Menzies: That is all. You may examine.

Mr. Nourse: That is all.

The Court: That is all.

(Witness excused.) [227]

Mr. Menzies: Mr. Clifton, will you take the stand?

LIONEL E. CLIFTON,

called as a witness by and on behalf of the defendant Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: State your full name, please.

The Witness: Lionel E. Clifton, C-l-i-f-t-o-n.

The Court: What is the witness' name?

The Clerk: Lionel E. Clifton.

By Mr. Menzies:

Q. Mr. Clifton, what is your business or occupation?

A. Claim manager for the Home Indemnity Company at Los Angeles.

Q. And you were such on the 20th of July, last year?

A. Yes.

Q. You know the defendant, George White?

A. Yes, sir.

Q. I will show you here a document and ask you to examine it and tell me whether or not your signature appears thereon, and that of Mr. White, the defendant in this case.

A. Yes, sir, it does.



(Testimony of Lionel E. Clifton)

Mr. Menzies: I will offer it in evidence, if the court please, and ask that it be marked as Defendant's Exhibit next in order. [228]

The Court: Any objection?

Mr. Nourse: None.

Mr. Luce: None.

Mr. Lonergan: None.

The Court: Admitted.

The Clerk: Defendant's Exhibit N for the Home Indemnity.

(The document referred to was marked Defendant Home Indemnity Company's Exhibit N, and was received in evidence.)

Q. By Mr. Menzies: Now, Mr. Clifton, did you receive a report of an accident involving a 1942 Lincoln Zephyr sedan that was covered under your policy that has been introduced in evidence here of the Home Indemnity Company? A. Yes, sir.

Q. Wherein the assured is the Northumberland Mining Company? A. Yes, sir.

Q. After you received that report, what did you do?

A. I telephoned your office and spoke to you.

Q. And then we went to San Diego; is that right?

A. I beg your pardon?

Q. Then we went to San Diego?

A. That is correct.

Q. Do you remember what time of day or night it was that we got to San Diego? [229]

A. About 9:00 o'clock.

Q. Do you recall whether or not you saw the defendant, Mr. George White, on that night?

A. I did.

(Testimony of Lionel E. Clifton)

Q. Did he give us an oral statement as to the facts and circumstances that he contended surrounded the accident of July 20, 1946, at or near Solano Beach?

A. He did.

Q. Do you remember the sum and substance of what he told you at that time?

A. The sum and substance of his statement at that time was that he had not been in an accident, that he had not struck anyone, and that he had not known anything about the accident.

Q. Was anything said at that time as to what, if any, damage there was to the car?

A. He stated that there was some damage sustained to the automobile at the race track.

Q. Did he tell you which race track?

A. I think he said the Inglewood race track. I am confused between the two of them, but I remember now that it was the Inglewood race track, or the race track at Inglewood.

Q. Did you see him again the next day?

A. I did.

Q. And who was present at that time? [230]

A. Mr. Whitcomb, a court reporter, Mr. White; yourself, and myself.

Q. Do you know whether or not a statement was taken from Mr. White at that time in your presence?

A. One was taken.

Q. Do you know whether or not Mr. Whitcomb administered an oath to him prior to the taking of the statement?

A. He did swear him in before taking the statement.

(Testimony of Lionel E. Clifton)

Q. And that is the statement that has been introduced in evidence here, and which was attached to our reply to the plaintiff's interrogatories? A. It is.

Q. At either of those occasions did Mr. White tell you that he wanted to change his story in any way, or that he might have fallen asleep and might have hit the two people while he was asleep?

A. He did not tell me that, sir.

Q. Did he tell anyone else that was present there at that time, in your presence? A. No.

Q. Now, when was the next time that you saw Mr. White after the morning of the 23rd?

A. The 26th of July; the following Friday, in other words.

Q. Where was that? A. At your office. [231]

Q. And what transpired at that time?

A. At that time Mr. White came in and signed some legal papers at your request, signed the non-waiver agreement which has just been introduced in evidence.

Q. Will you keep your voice up, please? It is hard to hear you.

A. I beg your pardon. He did discuss with you or ask you some questions about the procedure in the criminal matter, and that took up quite a bit of time in the conversation, and then it was at that time that he mentioned that he intended to plead guilty, or stated that he might plead guilty to the charge at San Diego, and if I remember correctly, his exact words were, "I think I am going to plead guilty. I can't tell you why."

And then during that conversation Mr. White was in a bit of a hurry, because he stated he wanted to get out to the race track that afternoon, stated he had some people

(Testimony of Lionel E. Clifton)

he wanted to see out there. It was at that time, or during that time that the statement that had been taken down by Mr. Whitcomb and transcribed was handed to him, but he did not take it with him. He had it and rolled it up, and I thought he was going to take it with him, but he didn't.

Q. And that is the statement that has been introduced here, that was taken on the 23rd of July?

A. That's right. [232]

Q. Was anything said at that time in any way that he wanted to change his statement, or that he wanted to add to the statement by saying that he might have been asleep and that he might have hit the people while he was asleep, or words to that effect?

A. There was no statement by Mr. White to that effect at any time.

Q. Who else was present at that time?

A. Mr. White, Mr. Watt, yourself and myself.

Q. Now, you attended the inquest, did you not, in San Diego on the 23rd?

A. I wouldn't say that I attended the inquest. I was in the building. I heard some testimony, and at other times I was in the Coroner's office trying to see Mr. Davis, I think his name is, who was investigating the family of the deceased people, and I was anxious to get information about their people and who were the heirs of the decedents, and things like that.

Q. Did you talk to Mr. John T. Holt there?

A. I beg your pardon?

(Testimony of Lionel E. Clifton)

Q. Did you talk to Mr. John T. Holt there?

A. The only conversation I had with Mr. Holt, if any, was that after officer Cassin's testimony, I think I recommended to both you and he that we have a photograph of the Lincoln, which was used by the officers, or whoever it was [233] that testified, and that it would be a good idea to have that, and Mr. Holt, if I remember right, was the one who recommended the photographer.

Q. You never discussed this case with Mr. Holt in any way?      A. I have not.

Q. After the conversation that we had in my office between yourself, and Mr. White, and Mr. Watt, and myself, did you ever talk to Mr. White again?

A. No. I met him in the hall yesterday morning and said, "Hello." That is all.

Q. You never wrote to him?      A. No.

Q. And he never wrote to you?      A. No.

Q. Did he ever make any request to you to make any change in his statement?      A. No.

Q. He didn't address any communication direct to the company?      A. No communications at all.

Mr. Menzies: You may examine.

Mr. Nourse: It is 4:30, your Honor. It is going to take me quite a while with this witness.

The Court: We may have to have an evening session [234] because we have agreed to take the other case tomorrow afternoon and we will have to finish by that time.

(Testimony of Lionel E. Clifton)

Cross Examination

By Mr. Nourse:

Q. Mr. Clifton, when you went in to see Mr. White after you arrived at San Diego, where did you see him? Did you call him to your room?

A. I think Mr. Menzies telephoned and stated we were upstairs.

Mr. Nourse: By the way, I think it has been stated to me by counsel, and I want to get this clear, because it will save some time. There is no question but what you, Mr. Menzies, had the full authority to represent the Home in all matters in this investigation and in receiving reports in the case?

Mr. Menzies: That is correct.

The Court: The stipulation is approved.

Q. By Mr. Nourse: You went in to the Grant Hotel and called Mr. White to your room?

A. Yes.

Q. You told him then who Mr. Menzies was, that he was an attorney? A. Yes, sir.

Q. And that he was going to be Mr. White's attorney in the civil matter?

A. I don't think I used that term. [235]

Q. Well, that he, Mr. Menzies, was going to represent him in the civil matter?

A. In so many words, that would be correct, yes.

Q. And that he should then tell you or tell Mr. Menzies and you everything that he could, and that it would be confidential? A. That is right.

Q. It could not be used against him?

A. "Couldn't" did you say, or "wouldn't"?



(Testimony of Lionel E. Clifton)

Q. Could not be used against him?

A. I don't know that I stated just that to him. I did tell him we represented the Northumberland Mining Company or Mr. Haggerty, the president of that company, and, incidentally, himself, and that we were interested only in the civil matter.

Q. Didn't you tell him you represented the Home?

A. I think he knew that because Mr. Haggerty and he had had a talk earlier in the day.

Q. But you did say that he should place confidence in you and tell you everything?

A. We asked him—

Mr. Menzies: Just a minute. That is assuming a fact not in evidence and is not proper examination.

The Court: This is cross examination, counsel, and counsel can assume any facts he wants to.

The Witness: I would not put it that way, Mr. Nourse. [236]

Q. By Mr. Nourse: Well, tell us what you did say?

A. All right. We told Mr. White that we represented Mr. Haggerty. I am quite certain that we introduced ourselves as representatives of the Home Indemnity Company, that we were interested in this matter on behalf of those people and himself, and only in so far as is concerned the civil end, we were not interested in the criminal proceeding, but we would treat whatever he told us in confidence; that we asked—we would ask him that, regardless of what he had told anybody else, to tell us the truth.

Q. And the statement he made to you that night was in substance and effect the same statement that you took from him the next morning with the reporter present?

A. That's right.

(Testimony of Lionel E. Clifton)

Q. Prior to taking his statement—the statement the next morning was taken at about 11:00 o'clock, was it?

A. About 11:00.

Q. Prior to that you had made some investigation as to the accident?

A. No, we had not.

Q. You had gone—

A. I beg your pardon. Are you talking about the following morning?

Q. Yes, sir.

A. Oh, Mr. Menzies and I had gone to the California [237] Garage.

Q. And walked around the car and examined the damage to it?

A. We walked around the car and got as close as it was possible to get, because it was roped off.

Q. Your reason for having a reporter the following day was to get what for you was just a written report of the accident; is that it?

A. There was not anything unusual in a serious case for us to use a court reporter.

The Court: Well, no, strike that out. That isn't responsive.

The Witness: Will you repeat the question?

Mr. Nourse: Read the question, please.

(The question was read.)

The Witness: Yes. I am sorry.

Q. By Mr. Nourse: And to get a full record, have a full record for the future of everything that occurred that day?

A. That is right.

Q. Now, when you took the report the following day, you had examined this car, had you?

A. Yes.

(Testimony of Lionel E. Clifton)

Q. And had you then formed a conclusion as to whether or not that car had collided with something other than a solid [238] object?      A. It was my—

Mr. Menzies: Object to that, if the court please, on the ground it is incompetant, irrevelant and immaterial, calls for a conclusion of the witness, and no foundation laid.

The Court: It calls for his conclusion, counsel.

Mr. Nourse: Yes, your Honor, but here, your Honor, is the representative of this corporation defendant. The question of whether or not they acted in good faith is based on what knowledge they then had. Remember, they are saying, "Here, we are misled." It goes to what knowledge they had, and when they acquired it, and it is what they did to Mr. White in questioning White. I think this goes right to the crux of the case and we have a right to show what they knew and the source they had it from, when your Honor is asked to decide whether they have been misled and imposed upon by the first statement of White.

The Court: I have no objection to what information they got, counsel, as to the statement of that, and the court will determine what the reasonable conclusions are from the information which they received, but the witness could not form a conclusion that could possibly be drawn from the information he had. That is my point. On the other hand, you may go into whatever information they got and what that showed.

Mr. Nourse: I am going to go at it in a little different [239] way, and by doing so I do not mean any disrespect to the court, but I will lead up to it a little differently.

(Testimony of Lionel E. Clifton)

Q. By Mr. Nourse: When you examined the car, you saw the condition of the car, as shown in the photographs of the car that have been introduced in evidence, did you not? I am showing you Exhibits D, H and I. There is another one that was taken of the side of the car. Here it is, Exhibit M.

A. The damage was noticeable, and I saw it.

Q. What?

A. The damage was noticeable, and I saw it.

Q. Did you see that damage that is shown by the pictures?

A. The damage on the left front fender and on the hood, yes, sir.

Q. Did you then come to the conclusion, in examining that, that damage had been caused by contact with a human body?

Mr. Menzies: Object to that, if the court please, on the ground it is incompetant, irrelevant and immaterial, calls for a conclusion and opinion, no foundation laid, and is hearsay. It is not a question of what, if any, conclusion this witness reached. The question here is whether or not this assured gave us full, fair, frank and truthful disclosure of the facts within his knowledge surrounding the accident in which he was involved. If he didn't, it is our contention that prejudice is presumed from the very giving of that statement, and it does not make any difference whether the company [240] was misled by it or not. We are placed in the position of being confronted with the very situation that the defendant here is confronted with in the event that he stuck to either one of those two stories

(Testimony of Lionel E. Clifton)

that he gave us, and the fact that we may not have known is not material.

The Court: Well, the court finds, so far as we have the testimony from the witness, that he saw a car and the left fender was in the condition that is displayed in these photographs. Suppose one of us were to see a car like that. Then the question is, would you conclude from that it hit a person. To the court that isn't possible to conclude by just looking at it. If we walk out of a building and see a car parked at the curb and the right fender is all smashed in, I don't believe you could conclude it hit a person. It may have hit a person, but you can't conclude that.

Mr. Nourse: Say the witness testifies he did reach that conclusion. Then we bring in other evidence. I can't bring all my case in here at once and must bring it in a step at a time, and I can show he followed that up and carried that out.

Your Honor hasn't read the statement taken from White yet, a question and answer statement. It was after he had made this examination. I want to see what conclusions he had come to. The question of good faith on the part of the insurance company is certainly going to be involved.

The Court: That is right. [241]

Mr. Nourse: —and that they were trying to entrap this man into a breach of the policy, so that they could attempt to walk out from liability.

The Court: That question isn't in the case at all. I wish to give you the broadest scope, but it stretches the court's credulity that a man can look at a car and say

(Testimony of Lionel E. Clifton)

whether it hit a lamp post or any other object, without any other evidence of investigation.

Mr. Nourse: You will remember you are talking to a man who deals in those investigations.

The court: That is right.

Mr. Nourse: If he did form that conclusion, even though it is erroneous, it is material here, and I don't see how your Honor can sit here and say what conclusion the witness would come to, and that is what your Honor's ruling would be based upon.

The Court: I am just trying to be realistic, Mr. Nourse. If you walk out of this building and see a car you never saw before and see a fender broken, I would not want to take your word for one moment if you told me that it hit a post, without anything else, by looking at it because I assume this damage could be caused in many ways, without any testimony, but I don't believe you can tell by just looking at the car. Another car may have caused it. I don't say that is this case at all, but I say if you have nothing but this car in front of [242] you, and you say, "I have never seen it before, I saw it by the curb and I have come to the conclusion that it was a lamp post that it hit," that would not mean anything to this court.

Mr. Nourse: Your Honor, if it was one of these corrugated lamp posts and the indentations of the lamp post showed on the car, you would not doubt it, would you?

The Court: Yes, I would. That wouldn't be enough. There might be many other instruments that are corrugated.



(Testimony of Lionel E. Clifton)

Mr. Nourse: I don't think that is the situation. I don't want to argue this way, your Honor.

The Court: I want you to argue.

Mr. Nourse: All right. That isn't quite the situation. Let's see. Here are people that have said, "We are representing you, Mr. White." That was said the night before. They go out there, and there is something about that car—I am arguing this, and it kind of spoils cross examination, but I must do it in front of the witness—there is something about that car that leads him to believe that the statement that was told him the day before is an untruth, and he goes back the next day and takes a statement down, not trying in any way to lead the witness to the truth by saying, "Here, I have noticed this about this car, and we believe from this that this was a body that was struck. Now, what about this, Mr. White?"

Now, if he did come to the conclusion, whether or not [243] your Honor would believe he could properly form it, that isn't the question, whether or not he could properly form it, but did he come to that conclusion.

The Court: You can show what was done by the company. Now, you have injected a number of factors and that is proper cross examination. What I have tried to point out is that all the circumstances of what he had in mind that could bring him to the conclusion should be shown. But all the testimony we had when I interrupted you was merely looking at a car that was roped off, and it did not mean much to the court if all he saw just the car. Now you have injected matters, and if he had all those matters called to his attention, then there is same reasonable view of the conclusion he took. I will permit that.

(Testimony of Lionel E. Clifton)

Q. By Mr. Nourse: Did you see marks on the car that you thought—I mean, stains you thought were blood?

Mr. Menzies: I object to that, if the court please, on the ground no foundation is laid, it calls for a conclusion, and on the question of whether it was human blood, it might have been an animal's.

The Court: You can reexamine him on that. I want to know if he saw something that could lead to that conclusion,, and then it is a question of the weight of it. Answer the question.

The Witness: I wouldn't say that I saw stains on the [244] car that I believed were blood at that time.

Q. By Mr. Nourse: Did you see anything on the car that led you to the conclusion that the damage to it had been caused by impact with something other than a solid object?

Mr. Menzies: Object to that, if the court please, on the ground it still calls for a conclusion and opinion of the witness, no foundation has been laid, and it is incompetent, irrelevant and immaterial.

The Court: I will permit that. That is all right. Answer it.

The Witness: It would be my conclusion, or I believed that the damage as sustained in that accident, or to that car—I beg your pardon—was not done by contact with a solid object.

Q. By Mr. Nourse: And you came to that conclusion on the morning of the 23rd, and before you examined Mr. White, or before he was examined by Mr. Menzies in your presence?

A. I would not put it just that way. I didn't come to that conclusion at that time.

(Testimony of Lionel E. Clifton)

Q. When did you reach that conclusion?

Mr. Menzies: We object to that, if the court please, on the ground it is incompetent, irrelevant and immaterial. In other words, it is our contention here that the mere giving of these false statements, the misleading statements, we were placed in the position, regardless of what our conclusions [245] might not have been, prejudicial not only to ourselves, but to the interests of Mr. White. In other words, we would be faced with a client on whom we couldn't rely.

The Court: I will hear that argument at the conclusion of the case. Proceed. You may answer.

The Witness: Will you repeat the question?

(The question was read.)

The Witness: After some further investigation had been made.

Q. By Mr. Nourse: About when?

A. Well, it would have been after the arraignment and after the plea, when we were then able to obtain same information from the experts.

Q. Now, that was on the 31st of July?

A. He was arraigned on the 31st, yes.

Q. And it was brought to your knowledge, then—you were in San Diego then?

A. I was down there, yes.

Q. And it was brought to your knowledge then that human blood had been found on the car, and that the marks which compared with the shirt upon one of the deceaseds, Mr. Lee, had been found on the car; is that right?

A. It was after the plea had been entered that we found that out, yes, sir.

(Testimony of Lionel E. Clifton)

Q. On the 31st? [246]

A. Wait a minute. We had a lot of conversation that day and there was information to that effect.

Q. You discussed that with Mr. Menzies?

A. Yes.

Q. Also, that the experts had fitted the pieces of the headlight found on the pavement to the portions that remained on the car?

A. I believe it was that date we got some information to that effect.

Q. Now, was it then you came to the conclusion that it was the White car that had struck and killed these two people, or the car that you insured?

Mr. Menzies: We object to that on the ground it calls for a conclusion and opinion of the witness, incompetent, irrelevant and immaterial, and is hearsay.

The Court: I will permit him to answer.

The Witness: I beg your pardon?

The Court: You may answer.

The Witness: May I have the question again?

(Question read.)

The Witness: The car that we had—apparently, the car that we insured.

Q. By Mr. Nourse: You came to that conclusion then?

A. That that automobile apparently was the automobile involved. [247]

Q. You went to San Diego knowing that Mr. White was going to plead guilty?

A. I don't think I did. I did not know that.

(Testimony of Lionel E. Clifton)

Q. You knew—

A. Other than a conversation on the 26th, when he said, "I think I am going to plead guilty. But I can't tell you why."

Q. Didn't you and Mr. Menzies travel down there together, to San Diego that day? A. No.

Q. How? A. No.

Q. You went separately? A. Yes.

Q. Did you discuss with Mr. Menzies the conversation which he had had with Mr. Holt relative to the entry of a plea of guilty?

A. I met Mr. Menzies down there that morning, but I don't particularly recall our conversation that morning. Not that I am trying to evade the issue, or anything, but—

Q. Didn't Mr. Menzies report to you that Mr. Holt had said to him, in substance, that he was going to have Mr. White plead guilty, and he was going to have him plead guilty because he thought he was going to get him off easier that way, and Menzies had told Holt it might breach the policy? Didn't [248] he discuss that with you?

A. I don't recall any conversation that day about it.

Q. Didn't he further discuss with you that Holt had told him that White had fallen asleep and asked to have a statement corrected so as to show that he had fallen asleep?

A. I think it was after that date, sir. You are talking about July 31st?

Q. Yes, I am talking about July 31st.

A. No, I don't recall that.

(Testimony of Lionel E. Clifton)

Q. Now, you did get that information though prior to the time Menzies was asked to sign—I mean, White was asked to sign the answers Mr. Menzies had prepared?

A. If I remember correctly, it was around the middle of August.

Q. Well, the middle of August would be about the 15th or 16th. The answers were taken down with the letter of the 15th. Now, was it before the answers went down there that you learned that?

A. My memory is that it was after Mr. Menzies went down with the answers.

Q. Did you know the contents of the answers were that were sent down, that they were to contain a denial?

A. I did not see them.

Q. Did you discuss the contents, that they would contain a denial of the manner in which the accident occurred, —[249] I mean, that an accident had occurred?

A. I believe Mr. Menzies did say that he was going to prepare the answers based on Mr. White's statement to him on July 23rd.

Q. At the time those answers were prepared and were sent down there, did you believe White's story that he made to you to be untrue?

A. I would say that I believed that White's story was untrue.

Q. At the time you tendered him the answers?

A. At the time Mr. Menzies took the answers down there.

Q. You didn't, however, disclaim liability then, did you?  
A. No.



(Testimony of Lionel E. Clifton)

Q. But you did disclaim as soon as Mr. White refused to verify the answers which denied the happening of the accident?

A. Mr. Menzies wrote the disclaimer of liability. Now, when he did that. I do not remember.

Q. You authorized him to do it, did you not?

A. He recommended it, and I agreed to it.

Q. And you agreed to it before he did it?

A. Yes.

Q. That was not done until after White had refused to sign the answers in which he would have denied the occurrence [250] of this accident; is that right?

A. That's right.

Q. Then was your reason for your disclaimer his refusal to sign an answer which you knew was false?

A. No.

Mr. Menzies: Just a minute. I object to that on the ground it calls for a conclusion and opinion of the witness and is incompetent, irrelevant and immaterial.

The Court: Oh, no. He may give his reason for it, counsel. That is proper. He has answered. The answer is "No."

The Witness: The disclaimer would be based on a number of things; White's apparent false statement, and his failure to sign the answer which was based on the statement and which therefore, proved that the statement was false.

Mr. Nourse: I think I will have to ask you to read that answer.

(The answer was read.)

(Testimony of Lionel E. Clifton)

Q. By Mr. Nourse: Would you have disclaimed if he had signed the answer which contained the denial of the occurrence of the accident?

Mr. Menzies: Just a minute. I object to that on the ground it is purely speculative, and calls for a conclusion and opinion of the witness.

The Court: Yes, I will sustain the objection as to what [251] he would have done under certain circumstances.

Q. By Mr. Nourse: Well, up to the time when you disclaimed, and after his refusal to verify this answer which Mr. Menzies prepared, you had no more knowledge as to the falsity of his statement to you than you had immediately before you had tendered the answers, did you?

Mr. Menzies: Object to that as argumentative, at to the form.

Mr. Nourse: It isn't argumentative, your Honor.

Mr. Menzies: That is the very question the court will have to decide.

The Court: No, as I understand it, it is just a question as to his information. The court would not know anything about it without the testimony, if he had any more information before the answers were submitted than after. That is the question.

The Witness: Would you mind reading the question?  
(The question was read.)

The Witness: I did not. Perhaps Mr. Menzies did.

Q. By Mr. Nourse: Now, when Mr. White came in on the 26th, the papers that were there to be signed were papers prepared by Mr. Menzies, I mean all of them except this one introduced into evidence,—by Mr. Menzies acting

(Testimony of Lionel E. Clifton)

as attorney for Mr. White, were they not, all having to do with the defense of the actions in the State Court? [252]

A. I would say that they were prepared by Mr. Menzies, as attorney for the Home Indemnity Company, and Mr. White.

Q. And Mr. White asked his advice as to whether he should sign those, did he not? A. He did.

Q. He asked the same advice, as to whether or not he should sign the reservation of rights, did he not?

A. He did.

Q. Now, did you state to Mr. White, or did any one state to Mr. White in your presence at the time this so-called reservation of rights was signed, Exhibit—

The Clerk: N.

Q. By Mr. Nourse:—N?

The Witness: May I have that again, please?

(The question was read.)

Q. By Mr. Nourse:—Exhibit N, that there had been any breach by him of any of the conditions of the policy?

A. Repeat that all for me again, please.

(The question was read.)

A. No.

Q. By Mr. Nourse: Did you then believe that there had been any failure on Mr. White's part to co-operate?

A. Yes.

Q. What? A. Yes. [253]

Q. In what did you then believe he had failed to co-operate?

A. Well, the facts seemed to speak for themselves. Mr. White gave as his statement that he had not been involved in an accident, didn't know anything about an

(Testimony of Lionel E. Clifton)

accident; he is arrested on the charge of manslaughter and the failure to stop after an accident, and he is put on a large amount of bail. I would say that the non-waiver agreement was taken as a precautionary measure. Somebody was obviously wrong there.

Q. But I asked you if you believed, then believed that he had failed to co-operate, and you said, "Yes." I asked you in what you then believed he had failed to co-operate.

A. In the answer I just gave you.

Q. You thought he was not telling the truth?

A. I didn't think the facts—

The Court: No; no. Answer the question.

The Witness: I doubted the truth of some of his statements, yes.

Q. By Mr. Nourse: Did you so advise him?

A. I don't think I did. We had previously asked him to tell us the truth.

Q. That was at the first meeting?

A. At the first meeting, and the next morning he was taken in and sworn in before his statement was taken.

Q. Now, between the 23rd of July and the 26th, hadn't [254] you learned any further facts relative to the happening of the accident? A. Oh, yes.

Q. And what were those?

A. Well, on the 24th Mr. Menzies and I left San Diego. Mr. Menzies left me at Solano Beach. At Solano Beach I questioned Mr. Cochran with a court reporter. I wanted to question Mr. Terrill, but he didn't want to talk to me. I questioned Mrs. Hawkins. I went over the scene of the accident and wanted to get some information about the lighting conditions there, and particularly found

(Testimony of Lionel E. Clifton)

out that the light in front of the cafe was not lit. Also, I wanted to try to get some information about the people and their apparent condition. I remember distinctly Mrs. Hawkins' testimony in that respect.

Then quite a bit of time was taken in trying to locate the Mrs. Gagen, I think it is, or Miss Gagen, who was the waitress at the drive-in restaurant in San Clemente at which Mr. White had told us he had stopped and had some coffee on his way down to San Diego the night of the accident.

Q. Did you talk to Mr. Hawkins, too?

A. Mr. Hawkins?

Q. Yes. A. I think I did.

Q. You had then learned what his statements were as to [255] the approximate point of impact, the actions of the car afterwards when it drove down the highway, and you had Mr. Cochran's version, as given here in court today, had you not? A. Repeat that, please.

Q. I will reframe the question. You learned then between the 23rd and 26th from Mr. Cochran and Mr. and Mrs. Hawkins all they have testified to here in this trial,—right? A. I talked to them, yes.

Q. You also learned that on the 23rd, as one of the officers there testified, as to seeing blood on the car, did you not?

A. I think Mr. Menzies told me one of the officers saw some marks on the car which he believed was blood.

Q. And he found pieces of what he believed to be human flesh?

A. I believe Mr. Menzies told me that.

(Testimony of Lionel E. Clifton)

Q. And that he found marks on there of what looked like the marks of clothing?

A. I don't remember that part.

Q. You don't remember that part?

A. No, sir, I don't.

Q. Well, did you on the 26th advise Mr. White, when you asked him to sign this reservation of rights, that you thought he had told you an untruth and asked him for and further [256] details?

A. I didn't have very much conversation with Mr. White that day. Mr. Menzies and he did most of the talking.

Q. Did Mr. Menzies do that in your presence?

A. Not that I remember.

Q. You knew, did you not, when you sent the answers down, or when the answers were taken down, or believed that White would refuse to sign them?

A. I didn't know whether he would sign them or not.

Q. Had you discussed that with Mr. Menzies at all?

A. I knew Mr. Menzies—I don't want to make a statement that—I want to answer your question—will you repeat it for me, please?

(The question was read.)

A. No.

Q. Was it your intention, when the answers were sent down, that if he refused to sign the answers denying that his car had struck these people, to disclaim?

Mr. Menzies: Just a minute. We object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: Will you read the question?

(The question was read.)



(Testimony of Lionel E. Clifton)

The Court: That is proper. You may answer.

The Witness: I don't believe I had formed any opinion at that time. [257]

Mr. Nourse: But you did form it immediately after he refused to sign?

A. On Mr. Menzies' recommendation yes.

Q. By Mr. Nourse: Now, before going to San Diego you also took a statement, or Mr. Menzies did, from Mr. Haggerty regarding this accident?

A. He had given me one. It was a short statement.

Q. It was taken on the 22nd before you went to San Diego? A. Oh, yes.

Q. Now, at some time you got from Mr. White his policies of insurance on his car from the Standard Accident and Insurance Exchange of the Automobile Club of California?

A. I think he brought those into Mr. Menzies' office on the 26th.

Q. Had you asked for them?

A. I don't remember asking for them.

Q. How? A. I don't remember asking for them.

Q. You discussed them with Mr. Menzies, didn't you?

A. I beg pardon?

Q. You had discussed them with Mr. Menzies, hadn't you?

A. We did. I think we had one particular discussion about that policy on the night of the 22nd.

Q. On the night of the 22nd? [258] A. Yes.

Q. But after the policy came in, you examined it? You examined the Standard policy?

A. I think I did.

(Testimony of Lionel E. Clifton)

Q. And you discussed it with Mr. Menzies, didn't you?

A. I don't recall anything particularly about it, but I imagine we did. It was there.

Q. Didn't you discuss it in connection with Mr. Menzies writing a letter disclaiming liability?

A. No.

Q. How? A. No.

Q. Did he show you the letter he was going to write disclaiming liability? A. I beg your pardon?

Q. Did he show you—just a minute. Let me see the exhibit. I will use my file.

I call your attention—

Mr. Nourse: I don't know whether this is in evidence. It is the letter of August 19th. Has that been offered in evidence yet?

Mr. Luce: I don't think so, unless it is an exhibit to one of his admissions.

Mr. Nourse: It is.

Q. By Mr. Nourse: I show you a copy of a letter which [259] the admissions of the Home Indemnity Company admit was written to Mr. White under date of August 19th. Did you see and discuss that letter with Mr. Menzies before it went out? A. No.

Q. How? A. No.

Q. You knew he was going to write it?

A. He mentioned that he was going to write a disclaimer, if that is the letter you are referring to, the disclaimer letter, but I didn't see that until about three weeks ago, if I remember right. I think, Mr. Nourse, you don't realize that this case involved a lot of investigations. I was handling most of the investigations around Santa Ana,

(Testimony of Lionel E. Clifton)

over in Arizona, and other places, about the people. Mr. Menzies was handling the other end of it entirely.

Q. In other words, as claims manager it was a part of your duties to decide on whether you should take reservation of rights or disclaim, but you delegated those to the attorney for the company?

A. Oh, more or less delegated those in this case to Mr. Menzies.

Q. On what date did you complete your investigation?

A. I don't think it is completed yet, sir.

Q. You are still investigating?

A. I beg pardon? [260]

Q. You are still investigating? A. Yes.

Mr. Nourse: That is all.

### Redirect Examination

By Mr. Menzies:

Q. Mr. Clifton, Mr. White didn't tell you that you would have to test the veracity of his statements, did he?

A. I didn't quite understand you, Tom.

Q. Mr. White didn't tell you at that time that you would have to test the veracity of his statements?

A. Wait a minute. Please read that.

(The question was read.)

A. No, he didn't.

Q. And he didn't tell you you would have to look out for them, did he? A. No.

Q. And when you first talked to him, did you tell him that you wanted to know the truth, regardless of what he had told the officers? A. That's right.

Q. And you relied on that statement?

A. I beg pardon?

(Testimony of Lionel E. Clifton)

Q. You relied on that statement?

A. I think we did.

Q. And you caused an investigation to be made to [261] determine whether or not that statement was true, didn't you?

A. We did.

Mr. Menzies: That is all.

Mr. Nourse: Just one further question, if I may ask it.

The Court: About how many more witnesses have you, Mr. Menzies?

Mr. Menzies: I think one short witness, unless counsel will stipulate that Mr. White was under oath.

Mr. Nourse: I am not through with Mr. Clifton yet, your Honor.

The Court: Oh, I am sorry.

Mr. Nourse: I said I had another question.

The Court: Yes.

#### Recross Examination

By Mr. Nourse:

Q. Mr. Clifton, I neglected to ask you: Sometime in the middle of August, you are not sure of the date, it was brought to your attention that Mr. White had stated that he had fallen asleep and that the accident might have occurred then: is that right?

A. That same to me from Mr. Menzies.

Q. Yes.

A. Yes, 'sir. And I understand it came to Mr. Menzies from Mr. Holt, and I understand that it came to Mr. Holt from Mr. White, although I know nothing about it. [262]

Q. It was also brought to your attention that he refused to sign the answers which Mr. Menzies had proffer-

(Testimony of Lionel E. Clifton)

ed—I forget their exhibit numbers here now, but the two that were not signed, because he said they were untrue in their denial of the occurrence of the accident?

Mr. Menzies: If the court please, there is no issue on that. We admitted that in our answer to the interrogatories. I believe there are admissions there, and it is in evidence.

The Court: I take it that is all counsel wants, if that is stipulated.

Mr. Nourse: All right. That it is stipulated that before this disclaimer was made, you knew that White would not sign the answers denying that his car had caused the collision?

Mr. Menzies: No.

The Court: All right. Then ask the question.

Mr. Nourse: That is the one you left the dates out of, in answering my interrogatory.

Mr. Menzies: No, I didn't.

Mr. Nourse: Your Honor, let's see what the admissions are, because I don't want to be fooled by any stipulation.

Mr. Menzies: You would not be.

Mr. Nourse: Now, which admission do you refer to here?

Mr. Menzies: The ones which you offered in evidence, I believe, unless I misunderstood your question.

Mr. Nourse: Well, I think I can save time, your Honor, if [263] we have the question answered.

The Court: All right. Answer the question.

Mr. Nourse: Please read the question.

(The question was read.)

(Testimony of Lionel E. Clifton)

Mr. Nourse: Strike the question, and I will ask it over again.

Q. By Mr. Nourse: You knew he had refused to sign the two answers prepared by Mr. Menzies before you consented to a disclaimer, did you not? A. Yes.

Mr. Nourse: That is all.

Mr. Menzies: That is all.

The Court: That is all.

(Witness excused.)

Mr. Menzies: Perhaps we can save some time here. My deposition was taken, and I am perfectly willing to offer it in evidence, and it may be considered as testimony, and it may save the court's time, and the court can read it later.

Also, may it be stipulated that Mr. White was under oath at the time he gave the statement of the 23rd?

Mr. Nourse: Certainly. I will so stipulate, that he was sworn. You have someone here to testify to it?

Mr. Menzies: I have the notary here who swore him.

Mr. Nourse: And I think you had someone testify to it already. [264]

Mr. Menzies: Is there any question by either of you gentlemen?

Mr. Loneragan: No.

Mr. Luce: No.

Mr. Nourse: And then instead of your testifying, you want to offer your deposition?

Mr. Menzies: Yes, I will offer that deposition.



Mr. Nourse: I would like to consider that for a little while, your Honor. I would like to glance over it again. It has been some days since I examined it.

Mr. Menzies: Then I can rest, your Honor, and I will do that, and that will save some of the court's time.

Mr. Lonergan: Your Honor, may the record show that I am representing Mr. Hervey here again today?

The Court: Yes. The record will so show, that Mr. Lonergan is representing Mr. Hervey.

Mr. Nourse: I think, your Honor, in the interests of saving time that I am willing to accept Mr. Menzies' offer that his deposition be considered in evidence as a whole, but as to other counsel, I don't know whether they have read it or not, and I don't know whether it is fair to them. They were not present at the taking of the deposition.

The Court: Mr. Luce?

Mr. Luce: I am not very familiar with the deposition, although partly so, but I have no objection to that course [265] being pursued.

The Court: All right. Mr. Lonergan?

Mr. Lonergan: I feel the same way, your Honor.

The Court: All right. It will be received.

(The deposition of Thomas P. Menzies is in words and figures as follows, to-wit:)

"In the District Court of the United States for the Southern District of California, Central Division.

Standard Accident Insurance Company of Detroit, a corporation, Plaintiff, vs. Home Indemnity Company of New York, a corporation, et al., Defendants.

No. 5729 O'C.

Deposition of Thomas P. Menzies, taken on behalf of plaintiff, at 1014 Fidelity Building, Los Angeles, California, at 3:20 o'clock p. m., Thursday, January 9, 1947, before Fred H. Quail, a Notary Public within and for the County of Los Angeles and State of California, pursuant to Stipulation.

Appearances of Counsel:

Nourse & Jones, Esqs., by Paul Nourse, Esq.,  
for plaintiff.

Thomas P. Menzies, Esq., and Harold L. Watt, Esq.,  
for defendants. [266]

"THOMAS P. MENZIES,

having been first duly sworn, deposed and testified as follows:

"Direct Examination

"By Mr. Nourse:

"Q. State your full name.

"A. Thomas P. Menzies.

"Q. You are an attorney at law?

"A. Pardon?

"Q. You are an attorney at law?

"A. Yes.

"Q. Admitted to practice when?

"A. I can't hear you.

(Deposition of Thomas P. Menzies)

"Q. Admitted to practice when?

"A. 1922.

"Q. Are you on a regular retainer basis by the Home?

"A. No.

"Q. You were employed in the matter of the claim relative to this accident that happened in Solano Beach?

"A. Solano Beach?

"Q. Yes. This accident that happened at Solano Beach. When were you employed in that matter?

"A. I think Clifton called me on the 22nd of July. I think that was the date.

"Q. Now, so as to save some questions, there is not [267] going to be any question raised of your full authority to act for the Home in this matter or in all matters—

"A. No.

"Q.—whether or not they are legal or really policy matters, matters of disclaimer.

"A. Policy matters I have nothing to do with.

"Q. I mean, matters of disclaimer.

"A. Paul, so you can get this straight, there is no question but what the disclaimer was made and entered into. We are not raising any question on that, or the authority to do so.

"Q. All right. You heard Mr. Clifton's testimony as to what occurred on the night of the 22nd?

"A. Yes.

"Q. Have you any variance in your part between what he testified to and your recollection?

"A. Yes. I only have reference to matters that didn't pertain to the accident. There were some other matters

(Deposition of Thomas P. Menzies)

discussed there, the subject being White's rise to fame and his fall. You are not concerned with that.

"Q. Nothing at all relevant in any way to coverage under policy or the manner or the circumstances surrounding the accident or what was done on that night or his knowledge of the damage to the car, anything that was not related to Clifton's statement; is that right? [268]

"A. I believe not. I can't remember whether we had a picture or whether we hadn't. I don't think so. I think we asked him, though, if he had seen the pictures in the paper, and I think he said he had.

"Q. That was that night?

"A. That was that night, yes.

"Q. Your recollection is definite on that?

"A. No, it is not. I won't swear to it one way or the other, because I haven't a fixed recollection on it.

"Q. Now, is your recollection as to what occurred on the 23rd, the morning of the 23rd, the same as given by Mr. Clifton?

"A. It is the same as in that transcript. I haven't read it for some weeks, and I believe that everything I heard transpired or took place there with the exception of after we had finished he said he was going over, I think, to Mr. Holt, or he had been over there all morning. That is why he was late coming in. I don't recall of anything else at this time.

"Q. You don't know whether he said he was going to Mr. Holt's or whether he had been there?

"A. No. I rather think he said he had been over there and Mr. Holt had been busy and couldn't see him, and he had to go back, and I told him that we would see him over

(Deposition of Thomas P. Menzies)

at the Inquest, and he said he wasn't going. He said he didn't [269] have to go, because they couldn't make him testify, and then I got up and left and went into the other room to get washed up.

"Q. This took place in your hotel room?

"A. Yes, in the Grant Hotel.

"Q. Did you have a conversation then with Holt within the next two or three days?

"A. We had a conversation that afternoon, shortly before the Inquest while we were waiting for them to begin. Just a matter of policy, how far we should go on examining the witnesses, and that was all. In other words, whether we should bring in hearsay and everything else that they knew, and I said, "Yes, we better do that," because it was primarily a fishing expedition, anyway.

"Q. Now, after the Inquest, the following day, didn't you have another conversation with Holt?

"A. I think it was that night. I think after the Inquest I wanted to talk to him, and he said he had to get back to his office and he would get hold of me, and either I got hold of him or he got hold of me on the phone.

"Q. Do you remember the substance of that conversation?

"A. Yes. Whether we would be willing to settle the case, and I told him that I didn't know, I didn't think so, because of the fact that that one witness' statement, it looked to me like there was a pretty good case for contributory negligence, and we discussed the fact that he had recognized that this officer Hake had done a pretty good job of getting out the facts there.

(Deposition of Thomas P. Menzies)

"Q. You mean that Holt had done a good job on examining Hake?

"A. Yes.

"Q. At the coroner's Inquest?

"A. Yes.

"Q. Did you talk with White again while you were in San Diego on that trip?

"A. Yes. I think that night after the Inquest. I don't remember whether it was before or after.

"Q. Were you present at any time when any pictures were shown White of the car?

"A. I don't know, to tell you the truth, whether he was shown them or whether he wasn't. I haven't any distinct recollection of it.

"Q. Did you have any conversation with Holt about what that damage showed?

"A. Yes. I said something, or Holt said—I have forgotten who brought the subject up, but one of us mentioned a dent in the car, and I told Holt that White had said the damage had been done up at the race track and that we were having the matter checked and we would check his movements down the road and would give him the benefit of any investiga- [271] tion that we made, and that we couldn't tell what the situation was until we knew what the experts would say that we knew the state had examined the car.

"Q. Did you have that investigation made at the race track?

"A. Yes.



(Deposition of Thomas P. Menzies)

“Q. As to whether there was any damage to the car then?

“A. Yes.

“Q. Did you advise Holt as to the results of it?

“A. I don’t remember whether I did or not, or whether I told Mr. White that, but I told one or the other of them.

“Q. What was that? What did you find out?

“A. That the car had been parked without the keys in it, and that the boys out there at the parking lot knew the car because it was out there very often, and that apparently it had been parked slightly out in front of the other cars and that they didn’t pay any attention to it, because everybody had to lock their cars, and they said it would have been possible to receive damage in the park and they not know about it, and I think that was the sum and substance of what we found out there.

“Q. Give me your recollection of a conversation that occurred here on the 26th of July in which Holt—I mean, in which White and Clifton and yourself were present. No one else was present, was there? [272]

“A. Yes, Mr. Watt was here.

“Q. All right. Give me your recollection.

“A. White came in. Mr. Clifton was here, and I told him that I had a motion for change of venue, affidavit of merits, the affidavit of residence, and the demand, and I also had a non-waiver agreement, and he said it was all right to sign the affidavits, and I said, “Yes, if they are true. You better read them over, because you have to swear to them,” and he said, well, what did they mean, and I said, “Well, one of them is that you were a resident and had been a resident of Los Angeles County at the time of

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the commencement of this action, and, if that is true, why, you can safely swear to it." He said, "Yes, I have lived here for three years." And I said, "The affidavit of merits is that you fully and fairly disclosed all the facts of the case to me, and I would advise you that you do have a defense, and the demand is that you are merely asking the court to move the case up here." "Why," he said, "all right." So I said, "Then there is this non-waiver agreement," and he said, "What is that?" I said, "Well, that is an agreement whereby if the company has any policy defenses or rights under the policy, that they are not waiving them by reason of investigating this accident, and that you are not waiving your rights under the policy to enforce any claims that you may have by reason of its terms," and he said, "Well, is it [273] all right for me to sign it?" And I said, "Well, that is up to you." I think Mr. Watt had come in, in the meantime, and he asked Mr. Watt about it. Harold explained to him approximately the same as I had, and he signed it. Then he said he was in a hurry, and I said, "Well, I have a copy of that sworn statement that you gave us down in San Diego, and I wish you would take time out and read it and sign it and make any corrections that you want to make in it." He said, "Well, I am going to the races." He said, "Well, let me see it," so I gave it to him. He looked at it a minute, and then he rolled it up in his hands, and he said, "Well, I have got to get out to the races." He said, "I have an appointment out there with some people that may help me." He said, "I am thinking about pleading guilty." I said, "Well, you better seek some advice on that from your own counsel because," I said, "if any difficulty arises between you and

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the Home Indemnity Company, I am their attorney, I am not yours, and I will continue to represent the Home, and you should get a competent attorney to represent you that knows something about insurance law, one that you would choose." He said, "Well, do you know anybody?" I said, "I know them, but you better choose them and," and I said, "You might talk to Mr. Haggarty. Maybe he knows somebody that will represent you." Well, he said, "What will happen if, at the preliminary examination," he said, [274] "I don't plead guilty? What will they do?" I explained the mechanics of the preliminary examination and told him what would happen, and then he said, "Well, suppose I should plead guilty?" I said, "Well, if you do, why, you will enter your plea there in the Municipal Court. You will go up and be arraigned in the Superior Court. You will waive your preliminary examination, but," I said, "if you are going to do that," I said, "I advise you to seek independent advice of your own attorney." So he said, all right, he would do that, and I said, "Well, what about this statement?" He says, "Well, I promised to meet these people out there, and they will be a big help to me, and" he said, "I have to see them because I have got to discuss with them what I am going to do," and he said, "I will look this over some time later." In the meantime, just as he left, he said that he had to get out. He wanted to know which was the quickest way to get out to Inglewood, and I told him to go down Figueroa and out. That is the sum and substance of what transpired them.

(Deposition of Thomas P. Menzies)

"Q. Did he say anything to you about—you knew that Holt was acting for him then, didn't you?

"A. I knew that Holt had represented him at the preliminary.

"Q. Did he tell you—

"A. He said that he had talked to Holt—I think he [275] mentioned that here in this conversation, and I don't know whether he said he completed his arrangements or he hadn't completed them. I am not sure.

"Q. Didn't he tell you that Holt had advised him to plead guilty?

"A. Yes, I believe he did.

"Q. Didn't he tell you why?

"A. No, he didn't.

"Q. Did you tell him what effect you thought his plea of guilty would have on his rights under the policy?

"A. No, I told him it might prejudice his rights under the policy.

"Q. Did he plead guilty?

"A. That's right.

"Q. Did you tell him why?

"A. No.

"Q. Was that before or after you had him sign the reservation of rights?

"A. That was after, I believe. I don't believe he had mentioned anything about the plea.

"Q. You went with White to get his car released, didn't you, from the sheriff's garage?

"A. Yes.

"Q. I mean, the Lincoln.

"A. Yes. [276]

(Deposition of Thomas P. Menzies)

“Q. Were you with him when he drove out?

“A. No.

“Q. What?

“A. I merely got the release for him.

“Q. You didn’t go to the garage?

“A. Yes, we went down there and the garage man tried to hold him for charges that he hadn’t authorized, and I told him not to pay it, and he wanted to, and I said no. I said, “It is Mr. Haggarty’s car.” I said, “Why should you pay something you don’t have to?” It was a \$10 or \$11 charge, and we left and—

“Q. You didn’t see the car, then, after that time?

“A. Pardon?

“Q. You didn’t see the car even at that time?

“A. No. The car was in the garage, and they had a little office at the front. We just went up to this wicket at the front. We saw the car was sitting in there.

“Q. Do you remember about what date that was?

“A. What date was the preliminary?

“Q. The arraignment?

“A. Yes, the arraignment.

“Q. The 31st.

“A. I think it was after that, because I think that—

“Q. It was after his plea of guilty, then?

“A. Yes, I think it was. [277]

“Q. Now, up to that time had anything been said to you about White being asleep?

“A. Yes. I think on the 29th Mr. Holt called and said that he had advised Mr. White to plead guilty, and I said, “Well, you better be sure that is the right thing to do,” and I said, “Don’t do anything that will prejudice his



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insurance,” and I said, “You know, a plea of guilty may do that.” I said, “You better give that some thought.” He said, “Well, I don’t know what else he can do,” and I said, “Well, you can do several things.” I said, “You can try out this preliminary examination. You can make them produce the facts and then determine what you want to do after you have all the facts.” He said, “Why, the District Attorney won’t stand for that.” They wanted a plea of guilty then, and if he went through a preliminary, why, they wouldn’t let him plead guilty. They would insist on the manslaughter. I said, “there is a good defense of contributory negligence there.” He said, “Well, if he takes my advice, he is going to to that.” I said, “Well, just remember that that may prejudice his insurance.” He said, “Well, just remember this conversation,” and I said I would. He says, “I am telling you now that he must have fallen asleep and he might have hit them while he was asleep.” [278]

“Q. Didn’t he say that White said that, that he had fallen asleep?

“A. He may have. I am not sure of that. Yes, I think he did, Paul, and I said, “Well, that is diametrically opposed to what he told us.” I said, “He denied to us that he was never in an automomobile accident.”

“Q. Well, now, I am going to ask you, if you will listen to me, if he didn’t say to you in substance that White had told him and that he was telling you that he had fallen asleep and he might have and believed that he had struck these people at the time he was asleep?

“A. No, he didn’t say he believed he had. He said he might have, that White had told him that he might have fallen asleep and he might have hit them.



(Deposition of Thomas P. Menzies)

“Q. Didn’t he ask that that be incorporated in the report that had been made?

“A. Yes, and I told him to tell White to come up and make whatever changes he wanted to, that we had his sworn statement, and he wasn’t under oath when he was making that one.

“Q. Didn’t he tell you further that he was going to tell White to plead guilty because he didn’t believe anyone would believe White’s story, he didn’t believe a jury would, and that he would be convicted of the charges, and if he put the court to the expense of a trial—I mean, the state to [279] the expense of a trial, that the court would probably be harsher with him than if he entered a plea of guilty?

“A. Yes, I think he did say that.

“Q. That was the reason he was advising him to plead guilty?

“A. No, he said there was the additional reason, that he didn’t think he could get the consent of the District Attorney or, as he put it, I think, make a deal with the District Attorney and get out from under the manslaughter charge, and that he wasn’t concerned with the insurance angle, his job was to get him out of the criminal charge.

“Q. But didn’t he say that he didn’t believe that a jury would believe his story and—you have just said that you thought he did say this, about the expense.

“A. Yes, he did. I believe he did. I don’t have a definite recollection, but I would in fairness say, well, if he said that, why, undoubtedly he did.

“Q. Now, had White told you before that, that he had fallen asleep?

“A. No.

(Deposition of Thomas P. Menzies)

“Q. What?

“A. No.

“Q. That was your first intimation?

“A. That was.

“Q. Then did you have another conversation with White [280] after that?

“A. Yes, I did.

“Q. You are talking now about a telephone conversation on the 29th, and I am asking for one after that.

“A. That’s right. I think it was—when were those answers due, do you remember?

“Q. You sent the answers down—

“A. No. I mean, when were they due the first time? I got an extension of time.

“Q. I don’t know.

“A. In that Fitzgerald case.

“Q. You sent the answers down with the letter on the 15th, I think. Your motion for a change of venue came up on the 12th. I call your attention to your letter of August 15th. Maybe that will help you.

“A. No, it was before that.

“Q. You are trying to fix the conversation—

“A. I am trying to fix the time. It was some time when I had my next conversation with him. That is what you asked; isn’t that correct?

“Q. Yes.

“A. I am trying to fix the time when I came back. It was same time, I would say, in the first part of August. I thought I had a way of fixing the date. Let me see. If I can look at that file a minute— [281]

(Deposition of Thomas P. Menzies)

“Q. These are mine.

“A. No, I don’t want that.

“Mr. Watt: Outside the record.

“(A discussion was had off the record.)

“The witness: Well, it was some time before his hearing on his application for probation, and I either was there in San Diego and filed some papers in the second case or—I think that was one where he signed the demand. I have forgotten whether I made that demand in that case and made a motion or not.

“Mr. Nourse: Q. You didn’t make any in that case?

“A. Well, it was in connection with one of those cases, and I was going into the clerk’s office, and he had come up the stairs, and I passed the time of day with him, and I said, “What are you doing here?” He says, “Oh, I have to go up to the probation officer,” and he said, “What are you doing?” I said, “I am taking care of some details here on these cases.” I said, “Well, be sure you tell him the truth. Don’t lie to him, because he will get a report to the court of whatever you tell him, and be sure you tell him the truth.” He said he would, and he went upstairs, and I went on down into the clerk’s office. He may have signed some papers in that Lee or Osborne case. I don’t recall.

“Q. Was anything then said about the accident or the [282] circumstances surrounding it?

“A. Nothing at all. That was the sum and substance of the conversation.

“Q. Did White ever personally talk with you about having fallen asleep? “A. Yes.

(Deposition of Thomas P. Menzies)

“Q. When?

“A. I think it was on the 17th of August.

“Q. Whereabouts?

“A. In San Diego, when I sent the letters down there and left mine with him, he wanted to know what they were, and I said they were the answers, and I said, “There is a letter there that explains it,” and I said, “You take that letter and those answers to your attorney before you sign them and, I said, “Be sure you know what you are doing, and if your attorney wants any information, why, let me know and I will be glad to let him have it.” He said, “Didn’t I tell you I might have fallen asleep?” And I said, “No, you didn’t.” He said, “Well, I should have,” and I said, “You didn’t.” He said, “Didn’t Holt tell you?” And I said, “Yes, he told me, but I was relying on your sworn statement when I prepared those answers, and if that is any different now, why, you take it to your attorney and straighten the matter out that way.”

“Q. Prior to that had you had any conversation with [283] Holt about what the contents of those answers would be, that there would be a denial in those answers that the accident occurred?

“A. I think it was after that.

“Q. Maybe if you will refer to your letter—

“A. I am not sure.

“Q. The letter of August 15th.

“A. Let’s see. Do you have it there? It will probably be easier.

“Q. Well, I thought I had it. You state in the second paragraph, “You will note that these answers are prepared in accordance with the sworn statement you gave me as

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attorney for the carrier of the Lincoln Zephyr sedan owned by the Northumberland Mining Company,” and isn’t it true that you had had a conversation with Holt a day or so before the 15th in which he said to you that White wouldn’t verify an answer that denied the accident, because now that he knew of the blood being on the car and realized the damage to the car, that he believed that his car was the one that had struck these people?

“A. No, I don’t think that happened until— that was on the 19th of August, I am pretty sure.

“Q. Then what was the conversation with Holt on the 19th?

“A. That was the substance of it. [284]

“Q. What I have stated?

“A. The sum and substance of it, and that we weren’t prejudiced, and I told him to read that 13 Cal. (2d), 322.

“Q. You mean the Valladao case?

“A. Yes, the Valladao case.

“Q. At that time, though, no answers had been filed?

“A. No, they weren’t filed. It was subsequent to that.

“Q. In one of these conversations, either the one on the 29th when you were discussing the effect of entering a plea of guilty, and he told you then that White had fallen asleep and you wanted that put in the statement, didn’t you say to him that that wasn’t in White’s original statement, and that White had breached the policy and that you had him over a barrel?

“A. I may have.

“Q. What? “A. I may have.

(Deposition of Thomas P. Menzies)

“Q. It was your intention to disclaim at the time you tendered him these answers, wasn’t it?

“A. No, it wasn’t. It was for the purpose of determining whether his first or second statement was true, and if he refused to sign them, then there was nothing else we could do but enter a disclaimer.

“Q. By “second story” you mean the story that he had [285] fallen asleep and that he might have hit them and believed he had hit them at that time?

“A. No, you are putting in “believed he had.”

“Q. Didn’t Holt say that to you?

“A. No, I don’t believe he did.

“Q. Well, after you tendered the answers, you had a conversation with Holt relative to his not verifying them?

“A. Yes.

“Q. What reason did Holt give for his not verifying them.

“A. He said that he couldn’t verify them, and that it was in the general tenor of the letter that he wrote on the 23rd.

“Q. 23rd? Do you have that letter? Well, didn’t he tell you that he couldn’t verify them because White couldn’t deny the occurrence of the accident in the face of all of the evidence there was that the Lincoln car had done the damage?

“A. No, he didn’t say that. Wait until I get that letter. Here it is.

“Q. Oh, that is the one you have admitted the truth of the statements in?

“Mr. Watt: I think we admitted that.



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“Mr. Nourse: That is attached to his answer. You have admitted the truth of those statements in there that [286] are quoted from this letter?”

“The Witness: That’s right.

“Q. I am talking now about the conversation that occurred. What reason did he give you on the phone for not verifying the original answers?”

“A. He said that they weren’t true.

“Q. What?”

“A. He said that they weren’t true and that he couldn’t sign them.

“Q. All right. What portions did he say weren’t true?”

“A. He said that they weren’t true, that they denied he was in an accident, and I told him that was the story that he had given us, and he said, “Well, do you remember what I told you?” And I said, “Yes, I do.” “He said, “Well, he has told you that he fell asleep.” I said, “No, he has never told me that.” I said, “You did, but he never did.”

“Q. That was the last of the conversation you had with Holt, wasn’t it?”

“A. I believe that is true.

“Q. When did you first learn, Tom, that blood had been found on the car? That is, human blood.

“A. I think it was after he had pleaded guilty, when all the officers and the District Attorney and Mr. Holt and the expert witness, Pinker, were in Whelan’s office. I [287] think Pinker said that he had run the tests on the car, and they ran human blood.

(Deposition of Thomas P. Menzies)

“Q. Were you there—

“A. Hake said at the Inquest, he said it was blood, but you can't tell until you run a test on it whether it is human.

“Q. Yes. At the same time, were you present when Pinker was there?

“A. Just for a few minutes.

“Q. Did you also hear then that they had found some shreds of clothing that matched those of the deceased?

“A. Well, I heard that they had a photograph, and I think I saw it that showed that the deceased—that is, that part of the man's shirt had left an imprint on the paint on the hood.

“Q. The imprint matched the shirt?

“A. Yes. They said that. I saw the photograph.

“Q. That was about the—

“A. That was the 31st of July.

“Q. That was the 31st?            “A. Yes.

“Q. Of July?            “A. Yes.

“Q. Was Holt there then?

“A. Yes, I think he was. [288]

“Q. Now, Tom, didn't he tell you at those times that the reason—I may have gone over this before, but I want to refresh your recollection now that the reason he was having the plea of guilty entered was that poor men and men of note like White never got a fair trial?

“A. No, he never said that, Paul.

“Q. And that he couldn't get a fair trial, and that no jury would believe his story, that he had fallen asleep,

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and that he thought White would get off easier with a plea of guilty than if he went to trial and was convicted?

"A. No, he didn't say that. He did say that he thought he would get off easier, but the balance of the conversation, no.

"Q. Did he tell you that he didn't think that the jury was going to believe White and he would be convicted, and that he would get a harsher sentence?

"A. No. He said he thought the judge would be harder on him if he were convicted, and I told him I didn't think so, that I had had a long and varied experience in that, and it was a man's right to a trial, and it was a very, very exceptional case that any judge took his spite out on a defendant when he stood trial. It usually made no difference as to the punishment, and that if he brought out all the evidence, he would know exactly where he stood, and so would the court, and I said, "You can bring out in your [289] trial all your favorable evidence that may not appear in your probation report."

"Q. Well, that was your statement, but his statement was that he was advising him to plead guilty because he thought White would get off easier that way?

"A. Yes.

"Q. Did you talk with White on the 31st and did he tell you he was going to go on Holt's advice and plead guilty?"

"A. Yes.

"Q. Do you have a telegram there—let's see. We left out this one. You did receive this telegram from Holt?

"A. Yes.

"Q. The one on the 20th?"

"A. Yes.

"Mr. Nourse: I would like to have that marked.

"Mr. Watt: Isn't that already attached?

(Deposition of Thomas P. Menzies)

“Mr. Nourse: That is already attached.

“Mr. Watt: To his answer to the interrogatories?

“Mr. Nourse: No, I never had seen it at the time I prepared the interrogatories.

“(The instrument in question, photostatic copy attached hereto, was marked Plaintiff’s Exhibit 1 for identification by the Notary Public.) [290]

“Mr. Nourse: Let’s see the telegram of the 27th, please?

“Q. You also received this telegram from Mr. Holt?

“A. That’s right.

“Mr. Nourse: I ask that be attached as our next exhibit in order.

“(The instrument in question, photostatic copy annexed hereto, was marked Plaintiff’s Exhibit 2 for identification by the Notary Public.)

“Mr. Nourse: Q. You referred to the letter of August 23rd. That is the one that is attached to the Home’s admissions here as Exhibit—

“A. I believe that is correct.

“Mr. Nourse: I better identify it here for the purpose of the record.

“The Witness: I believe that is correct.

“Mr. Nourse: It is the one that is—

“The Witness: On John Holt’s stationary.

“Mr. Nourse: Yes.

“The Witness: Yes, that’s it.

“Q. You received with that the answers that had been verified by White, prepared by Holt, in the two state court actions? “A. Yes.

(Deposition of Thomas P. Menzies)

“Q. What did you do with them? [291]

“A. I think that I returned them to him and told him that they weren’t satisfactory. I think I have a reply. I think the reply was attached, also, the one on the 26th addressed to Holt.

“Q. Yes. You returned them with that letter?

“A. I did.

“Q. Now, the two letters referred to, the first one being the letter of August 23rd, is the Exhibit J to the plaintiff’s requests of the Home for admission, and the letter of the 26th is the one, a copy of which is attached to their answer to the requests for admission, and is marked Exhibit A. Is that correct?

“A. If that is what it shows there. I don’t have the record in front of me.

“Q. All right. Now, did you get those answers back again? “A. Yes.

“Q. How did you receive them?

“A. I called Mr. Holt’s office and asked that he send them up when I couldn’t get an extension of time in which to plead.

“Q. Who did you talk to?

“A. I believe I talked to Mr. Lonergan.

“Q. No. I mean, who did you talk to when you called and asked that the answers be sent back? [292]

“A. One of his secretaries there.

“Q. One of the secretaries? “A. Yes.

“Q. You just requested they be mailed back to you?

“A. Yes.

“Q. You filed them on the following day?

“A. Shortly thereafter they were filed.

(Deposition of Thomas P. Menzies)

"Q. Shortly after that you made your motion to withdraw? "A. That's right.

"Q. By the way, this information that you received from Holt and what you did learn from White as to having fallen asleep, you relayed to the company, did you?

"A. I believe I did.

"Q. There is no contention that your receipt of it wasn't receiving notice by the company?

"A. No.

"Mr. Nourse: All right. That's all.

"The Witness: As a matter of fact, I didn't know Mr. Holt was representing him or not.

"Mr. Nourse: What?

"The Witness: As a matter of fact, I didn't know whether Holt was representing him or whether he wasn't.

"Mr. Nourse: I am not talking about Holt. I am talking about you. [293]

"The Witness: Oh, I represented them.

(Signed) Thomas P. Menzies.

"State of California, County of Los Angeles, ss.

"I, Fred H. Quail, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

"That prior to being examined the witness whose signature is affixed to the foregoing deposition Thomas P. Menzies, was by me sworn to testify the truth, the whole truth, and nothing but the truth;

"The the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction;



(Deposition of Thomas P. Menzies)

“That when reduced to typewriting it was read by or to the said witness, who was duly informed by me of the right to make such corrections as might be necessary to render the same true and correct, and was thereupon signed by the said witness in my presence.

“I further certify that I am not interested in the event of the action.

“Witness my hand and seal this.....day of....., 19.....

-----  
Notary Public in and for the County of  
Los Angeles, State of California. [294]

(Plaintiff's Exhibits 1 and 2 attached to the foregoing deposition are in words and figures as follows, to-wit:)

“WESTERN UNION

(50) . .

“BYA2 39 DL PD = SANDIEGO CALIF 20 131P  
1946 AUG 20 PM 1 54 THOMAS P MENZIES

“548 SOUTH SPRING ST LOS A RECEIVED  
AUG 20 1946 2:15 P.M.

“AS I TOLD YOU I REFUSE TO ACCEPT ANY  
RESPONSIBILITY IN THE CIVIL CASES  
AGAINST GEORGE WHITE. MR. WHITE IS  
WILLING AND HAS ALWAYS BEEN WILLING  
TO EXECUTE TRUTHFUL ANSWERS TO THE  
CASES AT YOUR REQUEST. HE STATES HE  
HAS REPEATEDLY TOLD YOU THAT HE FELL

ASLEEP BUT THAT YOU PERSIST IN DISREGARDING HIS STATEMENT THIS IS TO PUT YOU ON NOTICE THAT I AM NOT REPRESENTING MR. WHITE IN THE CIVIL CASES =

“JOHN T HOLT.

“Pltfs. 1 for Ident.

“Fred H. Quail

“1/9/47”

“WESTERN UNION

(50) . .

“BYA 2 08 47 = SANDIEGO CALIF 27 1157A 1946  
AUG 27 PM 12 51 THOMAS P. MENZIES ATTORNEE AT LAW

“548 SOUTH SPRING ST LOS A RECEIVED  
AUG 27 1946 1:20 P.M.

“AS I HAVE TOLD YOU AND WRITTEN YOU OVER AND OVER I DO NOT AND WILL NOT REPRESENT MR WHITE IN THE CIVIL CASES. HE HAS NOT [295] MADE INCONSISTENT STATEMENTS TO ME OR TO YOU. YOUR BEHAVIOR IS SHOCKING IN THE CASE AND BORDERS ON THE UNETHICAL =

“JOHN T HOLT ATTORNEY AT LAW.

Pltfs. Ex. 2 for Ident.

“Fred H. Quail

“1/9/47”

. . . . .

The Court: The defense rests?

Mr. Menzies: Yes.

The Court: How much rebuttal will you have, Mr. Nourse?

Mr. Nourse: I don't think very much, outside of the testimony of Mr. White.

The Court: How long will that take?

Mr. Nourse: The direct examination should not take over 30 minutes.

The Court: How much time do you want to argue in the morning, gentlemen,—about a half hour apiece? I have extensive notes, but I would like a summary.

Mr. Nourse: Does your Honor want any argument on the law?

The Court: I would like just a brief argument on the law, because I am going to ask for a brief on the law from both sides. But I would like to have a general outline, just the general principles, so to speak, of the law with the citations in the oral argument, because I will read the cases very [296] carefully that you submit to me.

Mr. Menzies: I think that should be enough, your Honor.

The Court: Then we can adjourn.

Mr. Nourse: I might want a little more time on the argument. I wish to make my argument as brief as possible, but I think to develop this thing properly your Honor will realize I must develop it from two different angles. I have offered to carry the burden for the other defendants and to develop it from their angle. Then not

knowing what view the court is going to take, I will have to develop it from another angle. If your Honor has glanced at my trial memorandum, I think you will appreciate that.

Mr. Luce: Does your Honor mean half an hour for each of us or does that include all of us?

The Court: No, I mean for each.

Mr. Luce: I had in mind making a short statement, but I do not think it will take me more than 15 or 20 minutes.

The Court: The thing I have in mind is that when I have attorneys waiting for trial, I try to accommodate those attorneys as well the attorneys that are before me. If we have half an hour of direct of Mr. White, and assuming a half hour of cross examination, then you have an hour right there and that takes us to 11:00 o'clock. That means we have an hour left. I thought we could get all the arguments in in that time, but I can see that we cannot. [297]

Mr. Nourse: What if we resume at 9:30 in the morning, your Honor? Would that help?

The Court: 9:30 to 10:30 would give us the testimony of Mr. White.

Mr. Nourse: I will say this: There are some portions of this record that have to be offered here, and I would have to check that tonight. That is a matter of merely two or three minutes in offering the record. There is a short piece of testimony I could put on right now.

The Court: All right.

Mr. Nourse: Will you take the stand, Mr. Lonergan.

JOHN B. LONERGAN,

called as a witness by and on behalf of the plaintiff, in rebuttal, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: John B. Lonergan.

By Mr. Nourse:

Q. You are an attorney at law? A. Yes, sir.

Q. Admitted to practice? A. Yes, sir.

Q. You are one of the firm of attorneys of Guthrie, Lonergan and Jordan, who are attorneys for Michael Lee, et al., [298] in the State Court action against Mr. George White? A. Yes, sir.

Q. I show you this letter and ask you if it is a letter you received from Mr. Menzies. A. Yes, it is.

Mr. Nourse: I offer it—it is your letter of August 14th—as our exhibit next in order.

The Court: In evidence.

The Clerk: Plaintiff's Exhibit 17.

(The document referred to was marked Plaintiff's Exhibit 17, and was received in evidence.)

Q. By Mr. Nourse: Prior to that had you had a conversation with Mr. Menzies relative to the answers that he was preparing in behalf of Mr. White?

A. Yes, I believe I had at least two conversations with him by telephone before that. The first was shortly before the 9th, I believe, of August, and in that I talked to him. I have forgotten now if I called him or he called me, and he was in Los Angeles. I had talked to someone else—to Mr. Clifton before that, and in my con-

(Testimony of John B. Lonergan)

versation with Mr. Menzies I believe I discussed with him the matter of settlement of the obligation and the liability to the Lee children. Do you want me to go ahead?

Q. Yes, I want you to tell what he said about the answers and about his representation of White. [299]

A. I gave him a figure at this time—and this was in the conversation before the 9th—and he sort of laughed it off, and then on the morning of the 14th, he talked again, and in that conversation he said that he had prepared some answers, or an answer, rather, to our complaint, and was sending it down for signature to San Diego, and, in substance, that he didn't think that White would sign it. Later I received the letter that you introduced in evidence.

Q. Did you offer to compromise the claims of your clients with Mr. Menzies?

Mr. Menzies: Object to that on the ground it is immaterial.

The Court: I think so.

Mr. Nourse: Wait a minute, your Honor.

The Court: All right.

Mr. Nourse: I will explain one part of our position on this, because counsel says he is not going to argue it. One of the grounds given in supporting disclaimers is that in some instances that keeps the company from taking advantage of having an early opportunity to settle the claims against it. Now, if there is going to be any such claim, I offer to prove by this witness that he offered a compromise, and to compromise the claims of his clients, and that he is still willing to compromise them, and there



(Testimony of John B. Lonergan)

has been no change in his figures or his disposition so to do. [300]

Mr. Menzies: I will renew my objection, your Honor, on the ground it would be immaterial. That isn't the question involved. The question here is we were placed in the position where we didn't know what to do, whether to rely on Mr. White or whether not to, and you can't tell that until all of the evidence is in, and to offer to compromise would not be material.

Mr. Nourse: It is the opportunity to compromise. If they are not going to claim that White put them in the position where they lost the opportunity to compromise and to act upon these claims, and to act with the same benefits to themselves as they would despite any statement made, then the evidence is not material. But if they are going to claim and argue that by reason of his statements they were deprived of the opportunity to compromise, then I think this is material.

Mr. Menzies: May I suggest it isn't solely the opportunity to compromise, but the question of what is going to enter into the compromise. If counsel for the assured cannot rely upon the integrity of the statements of the assured, certainly they are handicapped in the matter of their negotiations for a settlement. I think we can stipulate with Mr. Nourse that we would not argue that we didn't have the opportunity; that is, that we weren't put in touch with the proper people with whom the settlement had to be negotiated, but how could it be settled by negotiating if counsel had no confidence [301] in the witnesses or didn't know what the facts of the case were and couldn't find out. That is the crux of the situation, not the fact that we didn't know who the counsel for the claimants

(Testimony of John B. Lonergan)

were going to be. Certainly we would not know and your offer of proof is going to fall short of showing anything of the merits of the settlement or what is going to enter into it. Certainly, the position of the insurer is what the net worth of the case shows, or what evidence would stand up, or what the real facts as to the accident were. Certainly, that would enter into any settlement.

The Court: Would you read the first part of the statement, please? Of Mr. Menzies?

(The statement referred to was read.)

The Court: That is all Mr. Nourse is asking.

Mr. Nourse: No, your Honor, because he continues his statement. He says, "Of course, we knew who Mr. Lonergan was," but I won't want them to come in later and say, "Here, if Mr. White had told us originally that he had fallen asleep and that the accident might have happened then, and that he believed he did hit them, we could have gone out and settled these cases at a very advantageous figure, and now we have lost that, because he didn't tell us that until just before the answers came in."

Now, if that is going to be their claim and argument, then certainly evidence to show that they could at the present time [302] make the same kind of a compromise they could have originally, when they first talked compromise with Mr. Lonergan, is relevant and material.

The Court: What is there in the case that could not result in a compromise? What has changed this picture in any way? The facts in the case would have to be passed on by a jury anyway?

Mr. Nourse: That is right.

(Testimony of John B. Lonergan)

The Court: That is what makes a law suit. What is there from that standpoint?

Mr. Nourse: Was your Honor asking me?

The Court: Yes.

Mr. Nourse: That I can't say, your Honor, except I could say this, that I do know the claim that has been made in these other decisions which counsel will rely on, that the court has said that where the company has been misled and has lost the early opportunity to compromise. Now, it is true here, and it will be true at the very end of this case, that Mr. White's first statements that he had not been involved in an accident were untrue; not false in the sense of wilfully untrue, but untrue.

Now, taking Mr. Menzies' deposition, for instance. I know they are going to rely on the untruth of the first statement. They are going to say, "Well, when he came back and added to that, he could have said, 'Well, I fell asleep. The [303] accident may have happened then. I believe it did happen then; the accident must have occurred then, and I can't deny it did occur.'" So much for that, but I don't want them to add, "We lost the opportunity to compromise because this was delayed." I want to show they are in the same situation as when they were initially negotiating on the 23rd. If they are not going to contend they lost any opportunity to compromise, then there is no question here.

The Court: I can't see how there is. Of course, that isn't for me to say at this time or at this point in the evidence, so you can proceed with your question.

Mr. Nourse: Will you read the question, please?

The Court: Oh, you had better reframe it. It is back there ten pages or so.

(Testimony of John B. Lonergan)

Q. By Mr. Nourse: You talked on about the 9th of August with the witness who just testified, Mr. Clifton?

A. No, I talked with Mr. Clifton on the 30th of July. I spent, according to my time card, about an hour and a half with him and a Mr. Barr of the Barr Adjustment Company.

Q. Did you discuss the matter of compromise?

A. It was mentioned and my recollection, my best recollection, is that the substance of what we said was that I would talk to my client and find out what she wanted, she being Mildred E. Taylor, the mother of the two children, and later bring it up with them. [304]

Q. Did you later submit a figure?

A. I talked to her, and in my telephone conversation with Mr. Menzies, I believe that is the first time I submitted the figure.

Q. On the 9th of August?

A. It was shortly before the 9th.

Q. It was shortly before the 9th? A. Yes.

Q. Are you and your clients of the same disposition as to the amount you would settle for now, as you were then?

Mr. Menzies: Objected to on the ground it is incompetent, irrelevant and immaterial, hearsay, and a conclusion of the witness.

The Court: If he knows, and has been authorized, he may state.

(Testimony of John B. Lonergan)

The Witness: Your Honor, to answer that I would have to say this, that I talked to Mr. Menzies again after he had—after his client, the Northumberland Mining Company, had been served with the summons and complaint, and he called me and said they had been served and would appear, and we talked settlement again. He said, “Well, we have only the secondary liability.” And I said something about, “Well, what will you give?” And my recollection is that he said just some abstract figure about what they would give, it was less than 5,000, and it was something— [305]

The Court: I don’t care about the amount. I am not interested in that.

The Witness: I see. And I said, “No,” and I can’t say—I believe it would be privileged as whether it is settleable now.

Q. By Mr. Nourse: You feel it is a privileged communication from your client to you?

A. I haven’t consulted her since I came into the court room the other day, so I don’t know.

Mr. Nourse: All right. That is all.

Mr. Menzies: No questions.

(Witness excused.)

The Court: Then we will adjourn.

Mr. Nourse: Adjourned until when, your Honor?

The Court: 9:30 tomorrow morning.

(Whereupon, at 5:40 o’clock p. m., January 21, 1947, an adjournment was taken until 9:30 o’clock a. m., Wednesday, January 22, 1947.) [306]

Los Angeles, California, Wednesday, January 22, 1947,  
9:30 A. M.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 5729-Civil.  
Standard Accident Insurance Company of Detroit v.  
Home Indemnity Company of New York, and others, for  
further court trial.

The Court: Are both sides ready?

Mr. Nourse: Ready, your Honor.

Mr. Menzies: Ready.

Mr. Luce: Yes, your Honor.

Mr. Lonergan: Ready.

Mr. Menzies: May it please the court: Before we  
proceed, may I ask to be excused at 11:30? I have a sale  
on which I would like to attend, and if there is no objec-  
tion, I would like to be excused at that time. Mr. Watt  
will be here.

The Court: That is agreeable.

Mr. Lonergan: Your Honor, may the record again  
show that I am appearing for Mr. Hervey?

The Court: The record will so show, that Mr. Loner-  
gan is appearing for Mr. Hervey.

Mr. Nourse: Your Honor please, at the expense of  
somewhat over-amplifying the record, but I think for the  
convenience of the court, I am going to offer some letters,  
most of which are already in evidence by reference to the  
[309] admission. However, I think it will make the  
record a little more readily available to the court when  
they are referred to.

It is stipulated, as I understand, gentlemen, that these  
letters were written and received by the addressees in the  
true course of mail?

Mr. Menzies: So stipulated.



Mr. Luce: So stipulated.

The Court: Mr. Lonergan?

Mr. Lonergan: So stipulated, your Honor.

Mr. Nourse: I first offer the letter from Mr. Thomas P. Menzies to Mr. George White at the Beverly Wilshire Hotel, dated August 15, 1946.

The Clerk: That will be Plaintiff's Exhibit No. 17 in evidence.

Mr. Luce: Just a minute. I think there is already a No. 17.

The Court: Yes, Exhibit 17 is the last one. That is the August 14th letter from Mr. Menzies. Isn't that your record, Mr. Cross?

Mr. Menzies: No. 17 appears to be one to Mr. Lonergan.

The Court: Just a moment.

The Clerk: Yes, your Honor, that is correct. This will be Exhibit No. 18.

(The document referred to was marked Plaintiff's Exhibit No. 18, and was received in evidence.) [310]

The Court: Proceed.

Mr. Nourse: I next offer the letter from Thomas P. Menzies to George White at the Grant Hotel, San Diego, dated August 19, 1946.

The Clerk: Plaintiff's Exhibit 19 in evidence.

(The document referred to was marked Plaintiff's Exhibit 19, and was received in evidence.)

Mr. Nourse: Next, the letter from Thomas P. Menzies to John T. Holt, dated August 19, 1946.

The Clerk: Plaintiff's Exhibit No. 20 in evidence.

(The document referred to was marked Plaintiff's Exhibit 20, and was received in evidence.)

Mr. Nourse: Next, the letter from John T. Holt to Thomas P. Menzies, dated August 23, 1946.

The Clerk: Plaintiff's Exhibit No. 21 in evidence.

(The document referred to was marked Plaintiff's Exhibit 21, and was received in evidence.)

Mr. Nourse: Next, the letter from Thomas P. Menzies to John T. Holt, dated August 26, 1946.

The Clerk: Plaintiff's Exhibit No. 22 in evidence.

(The document referred to was marked Plaintiff's Exhibit 22, and was received in evidence.)

Mr. Nourse: Those are the only ones of which I have copies, your Honor.

Mr. Luce: Mr. George White, please. [311]

### GEORGE WHITE,

one of the defendants herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

#### Direct Examination

The Clerk: Your full name, please?

The Witness: George White.

Mr. Luce: Your Honor please, I will ask Mr. Nourse to examine Mr. White.

The Court: Very well.

Mr. Nourse: I don't want it to be understood, your Honor, that I am calling Mr. White as my own witness.

(Testimony of George White)

I will examine him and I will stay within the rules of direct examination so far as possible.

The Court: Very well.

By Mr. Nourse:

Q. You are one of the defendants in this action, Mr. White? A. Yes, sir.

Q. And the person who is the defendant in the State Court actions, that are described in the State Court, the actions brought against you by defendants Lee and Fitzgerald? A. Yes, sir.

Q. I show you this document, Mr. White, dated August 5, 1946, consisting of two pages, and ask if that is your signature on both the first and second pages [312]

Mr. Nourse: You have seen this, gentlemen.

Mr. Menzies: That is the one that is attached to the admissions?

Mr. Nourse: It is attached.

Q. By Mr. Nourse: This is the report to the Automobile Club, Mr. White?

A. It is the report the man took down. It looks like it. Yes, I signed that; that is my signature.

Q. That is your signature on both pages?

A. Yes, sir.

Q. Was his delivered by you to one of the adjusters for the Standard Accident Insurance Company?

A. Yes, sir.

Q. Whereabouts? In Hollywood, do you remember?

A. In San Diego. I went to both places. I delivered this in San Diego, I think.

(Testimony of George White)

Mr. Nourse: The document reads, your Honor:

"August 5, 1946

"Statement of George White, age 52, address Beverly Wilshire Hotel, Beverly Hills, Calif. Concerning accident that occurred on July 20, 1946, approx. ? on highway 101 near Solana Beach, Calif.

"I was driving Mr. Walter Haggerty Lincoln Sedan. The car is registered in the name of [313] Northumberland Mining Co. Mr. Haggerty is an officer of the Company. The Lincoln Sedan is registered in State of Nevada. I had full permission to drive the car from Los Angeles to San Diego as my car was in the repair shop.

"I left Los Angeles approx. 6:30 P. M. on July 20, 1946 and drove at average rate of speed. At San Clemente, Calif. at a Cafe and had 2 cups of coffee."

Then in parentheses "(drive in)" under the word "Cafe."

It is signed on that page, "George White."

"I was alone in the car. I had driven on considerable distance, when I must have dozed off to sleep for a moment. The next thing I remember my car was at almost a standstill on the highway, I looked around a moment without getting out of the car, then put car in low gear and proceeded on to San Diego. I had entered the City of San Diego when Officers stopped me and took me to Police Station without telling me what I was being taken in for except that there had been an accident and they were stopping all cars.

"Later I was booked for hit & run suspicion of manslaughter.

(Testimony of George White)

“Atty. Thomas P. Menzies, 548 South Spring St. and L. E. Clifton (Claim Adjuster) and representing [314] the Home Indemnity Co. of New York, insurance carriers for the Northumberland Mining Co. My insurance with Standard Accident is on a 1942 Packard Coupe.”

Then there is a word I can't make out and it is signed, “George White.”

It looks like—

The Witness: Maybe I can make it out.

(The document was handed to the witness.)

Q. By Mr. Nourse: Is that in your handwriting?

A. No.

Q. I refer to the last word right by your thumb.

“A. That is “Shaughnessy,” isn't it? That is right. “Shaughnessy,” the man's name from the Automobile Club in San Diego.

Q. In San Diego,—Shaughnessy?

A. Yes. I remember now.

Mr. Nourse: I offer this as Exhibit next in order.

The Clerk: Admitted, your Honor?

The Court: Yes.

The Clerk: Plaintiff's Exhibit 23 in evidence.

(The document referred to was marked Plaintiff's Exhibit 23, and was received in evidence.)

The Court: Mr. Cross, what is the date of that letter?

The Clerk: This letter, your Honor, is dated August 5, [315] 1946.

Q. By Mr. Nourse: Mr. White, I want you to tell the court in your own words what transpired on the day

(Testimony of George White)

of July 20, 1946, from the time you first obtained possession of the Lincoln car on that day up until the time you were stopped by an officer on entering San Diego.

A. I went to the garage of my hotel, which is in the basement, and took the car out. At the top of the grade—you go up an incline to get out—a Miss Audrey Young, whom I was to take to the races, was there with her father waiting for me. I drove her to the race track. We got to the race track, and we hurried in, as everybody does attending the races. Whenever I go there, I usually run up and down between races the paddock to the Turf Club, which is quite a few flights.

Mr. Menzies: Will you keep your voice up, Mr. White? It is hard to hear you over here.

The Witness: Yes, sir. We stayed until the last race. As soon as that was over, we all make a rush to leave. On leaving the race track, I approached the car, the Lincoln car, and noticed the left front headlight was smashed, broken.

Q. By Mr. Nourse: Tell what you mean. Describe that damage.

A. It was just broken. The glass was broken. In our haste, the same as everyone else, in order to beat the traffic [316] and to get out of the track, and nobody being there to complaint to, I said, "What is the use?" So we climbed in the car, and I said, "Well, somebody must have moved this car. It isn't where I left it, I am quite sure." I was talking to myself.

Q. Just tell what you did, not what was in your mind.

A. So we got out of the track as fast as we could, trying to beat as much traffic as we could, and I drove Miss Young back. And on the way back she happened to



(Testimony of George White)

tell me that she forgot to tell her father to pick her up at the hotel, but that she would like to go to the hotel as she had an appointment that was going to be near there, and she would take a taxicab. So I drove her to the drug store corner of the Beverly Wilshire Hotel, where she got out.

I drove around the corner to the side entrance of the hotel. I went in, went up to my apartment, got my little overnight bag, stopped for a moment to talk to Mr. Haggerty, to tell him I was driving down to San Diego. He said, "Very nice. Have a nice time," and off I went.

I forgot to tell in the previous statement that I stopped at a delicatessen.

Q. Just tell what you did. Don't remember what you said before. Tell the court what you did, irrespective of what you may have told anybody.

A. On leaving the hotel I stopped at a delicatessen which [317] is about two or three blocks from there, the name of which is Nate & Lou's on Beverly Boulevard, or Beverly Drive, rather, and I got two or three sandwiches, as I usually do. I drove on, and I usually drive until I get too—

Q. Not what you usually did. Please tell what you did that night, Mr. White.

A. I drove until I got to Sepulveda Boulevard, where there is not much traffic. It is about a six-lane highway. Then I just drive along and eat my sandwiches, which is my dinner.

When I got to San Clemente, I stopped at this drive-in and had two cups of coffee. I drove on. The next thing I knew my car was almost slowed down. Suddenly I realized I had been unconscious, or asleep, or something.

(Testimony of George White)

I grabbed myself together, had to put the car in low gear to get it going again, and continue on my way.

I stopped at the Del Mar Hotel. A Mr. Lou Irwin, who was an agent, told me he was interested in the hotel with some people who had newly acquired the hotel, and I thought I would stop in and inquire for a reservation for when the Del Mar races opened. I looked around for a few minutes in the lobby and in the bar, and could not find Mr. Irwin, so I got back in the car and drove on to San Diego.

As I neared San Diego I noticed a motorcycle. I constantly look through the mirror out of force of habit, and I [318] saw a red light, the motorcycle, which seemed to come out of nowhere and seemed to come just at the car, and I thought, "Well, I wonder what is up."

Q. Tell us what happened.

A. The motorcycle approached, and as he approached I pulled over to the right, and I saw that he was looking for me, and we stopped. I said, "What is"—

Q. Will you stop for just a minute there? I want to go back a little. When you say you came to consciousness and realized you had been asleep or unconscious, did you then know where you were on the highway?

A. No, I didn't quite recognize any landmark. It was too dark.

Q. What was the first landmark that you recognized after that?

A. Just before coming to Del Mar, there is sort of a bridge, a white bridge, a landmark with which I am kind of familiar, and I knew I was nearing Del Mar.

(Testimony of George White)

Q. Is that bridge, the entrance to the bridge, also the turn to the left and the northern entrance to the Del Mar track?

A. If you were going to the track, you would turn left a short time before you got to the bridge.

Q. Now, did you notice any difference in the amount of light thrown by your lights on the road before and after you [319] had this period of unconsciousness?

A. No, I didn't.

Q. When you recovered consciousness, what did you do? Just tell the court.

A. Just put the car into low gear. I said, "By golly, I must have dropped off, or something." That's about all. There wasn't anybody to talk to about it, and on I went.

Q. All right. Now, the officer stopped you, and you drew off to the side of the road. Did you alight from your car there?

A. No, sir.

Q. How?

A. No, sir.

Q. Tell what occurred.

A. As I remember it, as the officer approached I asked him, or I said, "What is the matter? I am not speeding."

He said, "No, sir. It isn't that. There was an accident a few miles back, and we are stopping all cars, and your car looks suspicious," or words to that effect.

Q. Then what did he do?

A. He asked me would I mind accompanying him to the police station, and I said, "Not at all."

Q. Well, did he go—

A. Oh, he walked around. He looked around. He took out his flashlight, looked at the car around the front, the [320] front of the car, then came back, and that is

(Testimony of George White)

when he asked me would I mind accompanying him to the police station.

Q. Did he mention anything about damage to the car there?

A. Yes, he mentioned the headlight, the left front headlight, and I thought he was referring to the broken glass I had seen. And I said, "That happened at Santa Anita," but I mean to say "Inglewood."

Q. And he asked you to accompany him, then?

A. Then he said, "Would you mind accompanying me to the police station?"

Q. And you did?           A. And I said, "Not at all."

Q. Now, when you arrived at the police station, which side of your car did you get out of? Or, when you got to Del Mar, when you went to Del Mar, which side of your car did you get out of?

A. I always get out of the right side.

Q. Which side did you get out of then?

A. The right side.

Q. When you came back, did you see the front of your car at all?           A. I didn't notice it.

Q. You drove into San Diego and went to the police station, and which side of your car did you get out of there? [321]           A. On the right-hand side.

Q. Now, do you have a customary side of your car to get out of?           A. Yes, sir.

Q. I mean a habitual side?           A. Yes, sir.

Q. Which side?           A. The right-hand side.

Q. Do you have a reason for that?

A. Yes, sir.

(Testimony of George White)

Q. What is it?

A. I might get hit with fourteen cars on the left-hand side. The right-hand side is always to the curb.

Q. All right. Now, you were taken into the police station and questioned there. Where was your car with relation to the door to the police station, that you entered?

A. We pulled up to the police station, and made a turn. I went inside, followed the motorcycle officer, and asked him what it was all about. He said, "Oh, well,"—

Q. Did you hear the question? Where did you park your car at the curb? It is understood that you parked heading north.

A. Correct.

Q. Now, where was it parked at the curb with relation to the door of the police station which you entered? [322]

A. Near the door.

Q. Where was the front of it with relation to that door, north or south?

A. The front of the car?

Q. Yes.

A. Well, the front of the car, north.

Q. I know, but where was the front of it? If you walked right out of the door, would you have passed in front of the car, behind the car, or would you have run into the side of it?

A. The car was a little to the left. That would be south of the door.

Q. How much?

A. I wouldn't—maybe 15 or 20 feet; 10 feet. I really wouldn't want to swear to that.

Q. All right. Now, did you stand there in the doorway at the time the pictures were taken?

A. Yes, sir.

(Testimony of George White)

Q. Did you then see the damage to your car?

A. No, sir. All the time that I was in the doorway, whenever the motorcycle officer that brought me there was there, I talked with him casually. There were photographers and several more men maybe, were always in front of the car. I paid no attention. I ignored the whole proceeding, because I was quite sure that I was not involved in any [323] accidents at the time.

Q. You did not go out to the car again after you left it?  
A. No, sir.

Q. Now, you had talked with Mr. Menzies then on the 22nd, the evening of the 22nd. That would be on Monday evening?  
A. On a Monday night.

Q. Yes.

A. I don't remember it by date, but I spoke with him.

Q. With him and Mr. Clifton?  
A. Yes, sir.

Q. Did you tell them then that you had fallen asleep?

A. No, sir.

Q. Or become unconscious at the wheel?

A. No, sir. I didn't think of it. I didn't think it was important, as at the time I felt quite sure I was not involved in any accident.

Q. And you didn't tell them on the 23rd, when they had your testimony taken down by a reporter?

A. I think it was later that afternoon when they showed me—

Q. No. Did you, when you made the report in the morning, tell them?

A. When the reporter was there? [324]

Q. —that you had fallen asleep?  
A. No, sir.



(Testimony of George White)

Q. And for the same reason that you had given us for not telling it on the 22nd?

A. I was quite sure it was unimportant and that I wasn't involved in any accident. That is the reason I didn't tell them.

Q. Now, you did tell them you had not been involved in any accident? A. That's right.

Q. That you hadn't collided with anything or anybody? A. Yes, sir.

Q. Was that your honest belief at that time?

A. Yes, sir.

Q. Had you at that time seen any pictures of the damage to your car, or the car in its damaged condition?

A. No, sir.

Q. Do you recollect when you first saw those pictures?

A. Yes, sir.

Q. —of the front of the car in its damaged condition?

A. Yes, sir.

Q. About when?

A. I think it was the same day that I gave the statement with the reporter there. I think it was later that afternoon that Mr. Menzies showed me the newspapers that had [325] the pictures of the car in it, and the minute I saw those pictures, I said, "The car was not damaged in that manner, and if that is the car that hit them, it must have happened when I fell asleep."

Q. Did you then tell him that you fell asleep?

A. Yes, sir.

Q. When did you learn that there was human blood—you did learn later that there was human blood and flesh found on your car?

A. Yes. When Mr. Holt told me that.

(Testimony of George White)

Q. He told you about the imprints also of clothing on the car? A. Yes, sir.

Q. And when you learned that, did you then believe it was your car that had struck the people?

A. Well, I couldn't believe otherwise. And I told Mr. Holt that evidently the car was the car that I was driving and it must have happened when I dozed off.

Q. Now, did you tell Mr. Menzies at any other time than the time you have mentioned that you fell asleep, and that you thought the accident must have happened then, or in substance that? A. Yes, sir.

Q. Whom?

A. Right in his office, in the presence of Mr. Clifton [326] and Mr. Watt, there, his partner.

Q. Tell what was said.

A. Well, when Mr. Holt called my attention to the fact, I was in San Diego, and Mr. Holt asked me did I tell Mr. Menzies. I said, yes. He said, "Be sure and have him put that in the record that you made under oath, this statement that you made under oath." And as I remember it, Mr. Holt telephoned Mr. Menzies right then. He said, "I will call him now and tell him." And they had quite a conversation about it back and forth over the telephone. Evidently Mr. Menzies did not want to put that statement in. So Mr. Holt said—I was on my way to Los Angeles—to call on Mr. Menzies, and Mr. Holt said, "Be sure and tell Mr. Menzies that you want that inserted in the statement that you made under oath," which I did.

(Testimony of George White)

Q. Now, at some time you took your policies of insurance that you had on your Packard in to Mr. Menzies. When was that, do you remember? Tell the court how you happened to do that.

A. I don't remember too much about it. He asked if I was insured, and I said I had the policy. I don't remember where it was.

Q. Well, were you in Mr. Menzies's office on more than one occasion?

A. I don't remember that. [327]

Q. Do you remember the occasion when you gave him the policies?

A. No, I don't remember the day that I gave them to him.

Q. Was it a different day than the day when you went up there and signed some documents, affidavits, and a reservation of rights?

A. I don't quite remember. I think I might have given it to him before that.

Q. Well, could it be that you told him about falling asleep on the day you gave him the policies rather than on the day you signed those papers?

A. It could be, but I don't remember it.

Q. Well, what did Mr. Menzies say when you asked him to put that into the statement?

A. I don't remember what he said, but I do remember that he didn't want to do it. He didn't seem to want to put it in, anyhow.

Q. Now, did you tell him on that day that you were going to plead guilty?

A. I told him that Mr. Holt advised me to plead guilty, and that I was going to do it, and what did he think about

(Testimony of George White)

it. And he was noncommittal. He kind of grinned, I remember, and said, "Well, I don't know." That was about it.

Q. Now, you did enter a plea of guilty? [328]

A. I did.

Q. Will you tell the court why?

A. When I asked Mr. Holt why he wanted me to plead guilty, he said, "Well,"—

Mr. Menzies: I move that be stricken as hearsay, any conversation between this witness and Mr. Holt.

The Court: Yes, I will have to sustain that objection. It is in the record by Mr. Holt, anyway.

Q. By Mr. Nourse: Well, did you do it on the advice of Mr. Holt? A. Yes.

Q. Did you object to following that advice?

A. I did.

Q. What did you say in that regard?

Mr. Menzies: Object to that on the ground it is hearsay.

Mr. Nourse: Your Honor, this isn't hearsay. This is to prove the state of mind of the witness. I have contended here and will contend that this was an inconsistent act, in that it admitted that he had hit and run. Now, if there is an explanation of that, it takes away the admission, just as much as it would in the trial of personal injury actions.

The Court: I think that is correct, to show why it was done. I think that is correct, counsel, in this case. Now, he pleaded guilty to what?

Q. By Mr. Nourse: You pleaded guilty to the hit and [329] run charge— A. Yes, sir.

(Testimony of George White)

Q. —that was filed in the State Court?

A. Yes, sir.

Mr. Nourse: Now, what was the question that I asked him.

(The record was read by the reporter as follows:

“Q. Did you object to following that advice?

“A. I did.

“Q. What did you say in that regard?”)

The Witness: Is that the last question? I thought you asked did I object to pleading guilty.

Q. By Mr. Nourse: What is the answer?

A. Yes, I objected because I didn't like the idea of pleading guilty to an offense that I knew nothing about. And Mr. Holt said, “Technically, according to law, you are innocent. While I believe you, I am quite sure that a jury won't. It is very hard to believe. If you put the State to the expense of a jury trial, the court might be more severe. If you plead guilty to the hit-run charge, I am quite sure you will be put on probation, your record being so clean,” and so forth. And that convinced me, so I agreed to plead guilty to the hit-run charge.

Q. Now, after you had pleaded guilty, you received the answers which were prepared by Mr. Holt?

The Court: Prepared by Mr. Holt? [330]

Mr. Nourse: No, the answers which were prepared by Mr. Menzies.

Q. By Mr. Nourse: You received from Mr. Menzies, did you not, the answers to the complaint in the State Court actions?

A. I very seldom read any of the—

(Testimony of George White)

The Court: No. Listen to the question, Mr. White. Read the question, please.

(The question was read.)

Q. By Mr. Nourse: May I make this a little more clear? Do you remember Mr. Menzies bringing you in San Diego a letter addressed to you in Beverly Hills, and an answer to each of the complaints against you for damages, in which you would have denied that the accident occurred?

A. The papers he brought me I brought to Mr. Holt. I am not familiar with—

The Court: No. Answer the question.

The Witness: I brought them to Mr. Holt—

The Court: That is all right.

The Witness: —and Mr. Holt said, “You cannot sign these.”

Q. By Mr. Nourse: Why?

A. He said, “You cannot sign these because these letters state that you did not —that the car did not hit the people.” [331]

Q. And did you refuse to sign them for that reason?

A. Yes, sir.

Q. Mr. White, I will show you Defendants’ Exhibit N. Is that your signature?

A. That is my signature, yes.

Q. Do you remember signing that document in Mr. Menzies office?

A. I didn’t read the document—

The Court: No. Listen to the question, Mr. White.

The Witness: In Mr. Menzies’ office on this day he handed me several papers to sign. I was under the impres-



(Testimony of George White)

sion he was acting in my interests, and I was in a hurry to get to Inglewood, and as he handed me each paper to sign, I think Mr. Clifton and Mr. Watt were there, I asked him, "Is it O. K. to sign this?" I didn't want to bother reading it. He said, "Yes, O. K." And I signed whatever papers he handed me there.

Q. By Mr. Nourse: Did he explain that this was some agreement between you and the Home?

A. Not as I remember. I didn't ask. I asked was it all right to sign them.

Q. When they came to see you in San Diego, what did they say as to whom they were representing, or what their capacity was when they called on you?

A. You mean when I first saw them in San Diego? [332]

Q. Yes.

A. That I remember distinctly, Mr. Menzies, saying, "We are here to help you." He said, "You couldn't hire me for a million dollars, but we are here to help you all we can," and so forth, "and we are very, very cordial." And we talked and talked about the accident.

Q. No. What did he say as to his capacity? Did he say anything as to how he was going to help you, in what capacity he was going to act?

A. He led me to believe that he was going to be my attorney.

The Court: No, strike that out.

Q. By Mr. Nourse: Please, Mr. White, what did he say?

A. That they were going to help me all they could, and look after the case, look after my interests in the case.

(Testimony of George White)

Q. On which side of the case, did they say?

A. That I don't remember, but I remember Mr. Menzies did say that I ought to get a good lawyer to handle the criminal action.

Q. Now, when you were there on the 26th, you were shown the transcript of the conversation that had occurred on the 23rd at San Diego?

A. You mean the one the reporter took down,—my statement?

Q. Yes. [333]

A. In Mr. Menzies' office. He handed me a copy, and I didn't read it. He asked me to sign it, and I told him that I would rather have Mr. Holt read it first. He handed me a copy, and then he said, "Well, I will be going to San Diego." He said, "I will take it down, take one with me, and give it to him." So I threw it back across the desk to him. That is the day I was there when I was going to the race track to find out if the parking man knew if my car had been moved.

So I didn't sign it and that was the—yes, it was at that time again I had told him about having fallen asleep and that I wanted to insert that in there, in that transcript, and he didn't seem to want to do that.

Q. Nothing was said to you about your having breached the policy in any way? A. No, sir.

Q. No further questions were asked you as to how the accident occurred? A. No, sir.

(Testimony of George White)

Q. Or as to the damage to the car, or anything of that kind? A. Not a word.

Mr. Nourse: You may cross-examine.

Mr. Luce: No questions.

Mr. Lonergan: No questions. [334]

The Court: Mr. Menzies.

### Cross Examination

By Mr. Menzies:

Q. Mr. White, isn't it a fact that is was suggested to you when you intimidated you would plead guilty, that it might materially affect the provisions of your policy?

The Court: Just a moment. Will you read that, please?

(The question was read.)

The Witness: Not that I recall.

Q. By Mr. Menzies: You haven't any recollection of that at all, have you? A. No.

Q. Now, in regard to that non-waived agreement—can you hear me now Mr. White?

A. Yes.

Q. —didn't you ask Mr. Watt the effect of that?

A. I may have.

Q. And didn't he tell you?

A. I don't remember whether he did or not. In fact, I didn't pay much attention to anything about the legal papers.

Q. In other words, you were in a hurry to make an appointment; isn't that correct?

A. In other words, I had great confidence in you people and signed the things that were handed me. [335]

(Testimony of George White)

Q. Just answer the question. In other words, you were in a hurry to make an appointment; isn't that true?

A. At the race track. I told you I was in a hurry to get to the race track, yes.

Q. Do you remember talking to Mr. Nourse in San Diego, Mr. Paul Nourse, who is here in the court room and has just been examining you.

Mr. Nourse: Give him the date. It wasn't in San Diego. It was at the Road Camp.

Q. By Mr. Menzies: It was at the Road Camp?

A. Yes.

Mr. Nourse: September 9th.

Q. By Mr. Menzies: On September 9th?

A. Yes.

Q. Did you tell Mr. Nourse at that time, in substance or effect, "I am not sure when I first told Mr. Menzies I had dozed off, but it was before any answers to the State Court suits were prepared. Also, I told him before they were prepared that I believed it was my car that hit the people." Do you recall telling Mr. Nourse that?

A. Yes.

Q. Was that correct? A. It could be.

Mr. Menzies: That is all.

Mr. Nourse: That is all. [336]

Mr. Luce: That is all.

Mr. Lonergan: No questions.

The Court: That is all, Mr. White.

Mr. Luce: Your Honor, is Mr. White now excused so that the officer may return him to San Diego?

Mr. Menzies: Certainly.

The Court: Mr. Lonergan?

Mr. Lonergan: Yes.

The Court: Are you through with Mr. White, Mr. Nourse?

Mr. Nourse: I don't know if they are going to have any evidence. I can't tell.

Mr. Menzies: May I have one moment?

The Court: Yes.

Mr. Menzies: Mr. Watt.

HAROLD L. WATT,

called as a witness by and on behalf of the defendant, Home Indemnity Company of New York, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Your full name, please?

The Witness: Harold L. Watt.

Q. By Mr. Menzies: Mr. Watt, what is your profession?

A. I am an attorney-at-law.

Q. How long have you been admitted to practice before the courts of the State of California and the United States [337] District Court here?

A. Twenty-eight years.

Q. Now, do you recall an occasion when Mr. White was in our office?

A. Yes, I believe I do. I am sure I do.

Q. Do you recall that that was on or about the 26th of August, 1946?

A. Yes, I can fix the time by reference to the time that we had under consideration the preparation of pleadings in the civil cases.

The Court: That was what date?

(Testimony of Harold L. Watt)

Mr. Nourse: July he means to say.

Mr. Menzies: I should say July, your Honor.

The Court: That is what I thought.

Mr. Menzies: Thank you.

Q. By Mr. Menzies: At that time was Mr. White handed a reservation of rights, which has been offered in evidence here?

A. I was present in your room when Mr. Clifton and Mr. White, I believe, during the entire time that Mr. White was in the office, although he arrived before I came in the office. The document which has been identified as a reservation of rights was handed to Mr. White in my presence in your room.

The Court: That is Exhibit N?

Mr. Menzies: That is Exhibit N, sir. [338]

The Court: Proceed.

Q. By Mr. Menzies: What was said in regard to that Exhibit N, the reservation of rights?

A. I recall your asking him to sign it and stating to Mr. White that it was a reservation of rights. I recall Mr. White asking if it was all right to sign it, asking you if it was all right for him to sign it, and I recall that he turned to me and said, "What is this about?" Or, "What is this?"

I think that was the only direct conversation perhaps that I had with Mr. White in the interview, and I recall distinctly that I told him—I explained to him as well as I could the nature of that reservation of rights was; that, in my opinion, it did not prejudice any of his rights under the policy or any of the rights of the company under the policy, but that the company would conduct its examination and would defend him without reservation



(Testimony of Harold L. Watt)

of any rights which it might have, according to the terms of the policy. I am sure that explanation was made in substantially those words in Mr. White's presence, directly to Mr. White.

Q. At that same time was there any mention made as to whether or not Mr. White might plead guilty to 480 of the Vehicle Code?

A. Yes, the subject of the criminal charges came out, and Mr. White said that he had under consideration entering a plea of guilty. As I recall it, he did say in so many [339] words that Mr. Holt had advised him to plead guilty for reasons which he did not—Mr. White said for reasons which he, Mr. White, did not feel free to discuss with us, his reasons why he thought it was in his interests to plead guilty.

The Court: This part of the testimony is not rebuttal, this last part.

Mr. Menzies: Very well, your Honor.

The Court: All right. Proceed.

Q. By Mr. Menzies: Was there any mention in that conversation, while Mr. White was there, about his having fallen asleep?

A. There was no mention whatever of that subject or of the accident directly, that is, the happening of the accident.

Q. And was there—

The Court: When did you first learn that Mr. White contended that he had fallen asleep?

The Witness: Through Mr. Holt's report, when Mr. Menzies had taken answers to San Diego for execution or for verification by Mr. White, and had left them there for submission to Mr. Holt, so it was reported to me, and

(Testimony of Harold L. Watt)

then Mr. Holt phoned our office, and I was present when Mr. Menzies talked with him over the telephone, and that was the first intimation I had that Mr. White claimed he had fallen asleep. That was through Mr. Holt, after he had decided to plead guilty to the [340] criminal charge, and when he was asked to verify answers in accordance with his original sworn complaint.

Mr. Menzies: You may cross-examine.

#### Cross Examination

By Mr. Nourse:

Q. I want to clear up one thing. I think you have two things confused. In your very last answer you said you learned that when Mr. Holt said that he had advised Mr. Menzies that he was going to plead Mr. White. Isn't it the testimony of Mr. Menzies and the testimony of Mr. Holt that occurred in San Diego, and isn't that the time that the first conversation occurred with Holt, in which the fact that White had fallen asleep and believed he might have hit the people came out?

A. Well, you understand, Mr. Nourse, that I was never in San Diego on this case, and that I never personally had any conversation with Mr. Holt. The court asked me when I first learned that Mr. White claimed that he had fallen asleep, and my answer would be that it was in connection with the submission of the answers in the civil cases to Mr. White.

Q. Before they were submitted?

A. No, after they were submitted.

(Testimony of Harold L. Watt)

Q. In other words, you didn't learn of that phase of it from Mr. Menzies until after there had been a refusal to [341] verify the answers?

A. That is correct.

Q. But you don't mean to intimate that that information did not come to Mr. Menzies or to your office before that time?

Mr. Menzies: We don't contend that, Mr. Nourse.

Mr. Nourse: All right. That is all.

The Court: That is all.

(Witness excused.)

Mr. Menzies: Take the stand, Mr. Hake, please.

LUTHER M. HAKE,

recalled as a witness on behalf of the defendant, Home Indemnity Company of New York, having been previously sworn, testified further as follows:

The Court: Let the record show that this witness has been previously sworn. Proceed.

Direct Examination

By Mr. Menzies:

Q. Can you tell the court the lighting conditions at the intersection of Highway 101, about 100 or 150 yards south of where this accident occurred?

A. Yes, sir.

Mr. Nourse: Just a moment. I don't think that is rebuttal, your Honor, and there were other witnesses here who could have testified to that point much better. [342]

Mr. Menzies: My point is simply this, your Honor, that Mr. White testified that when he came to that it was

(Testimony of Luther M. Hake)

in a dark part of the road and that he didn't know where he was, didn't realize where he was until he was almost down to Del Mar.

The Court: You may answer the question.

The Witness: On the southeast—on the southeast corner of the intersection of Highway 101 and Rancho Santa Fe Road, there is an overhead light.

Q. By Mr. Menzies: Is that the usual street arc light that is overhead? A. Yes, sir.

Q. Any other lights besides that?

A. Then further south, on the south end of the southwest corner of the plaza, in the center of Solano Beach, there is another light of a similar type.

Q. Is there any light there by the bank, which would be the northwest corner?

A. There is a street light there of a type that comes up from the ground.

Q. That is on a short concrete pole?

A. Yes, sir.

Q. Ten or Twelve feet high?

A. Yes, sir.

Q. Were there any other lights between the Solano [343] Beach Cafe and the one at the corner there at the plaza by the bank, on the northwest corner, if you recall?

A. There is one or two standards placed there, but as to whether or not they were burning, I can't answer that.

Q. You do know that the other lights that you have mentioned were burning? A. Yes, sir.

Mr. Menzies: That is all.

(Testimony of Luther M. Hake)

Cross Examination

By Mr. Nourse:

Q. Mr. Hake, just for my information, are these buildings there on the shore side or the ocean side, or the inland side of the highway? I forget.

A. They are on the west side, or the ocean side.

Q. On the ocean side. So they face the hills or mountains? A. Yes, sir, they face east.

Q. And on the opposite side there are no buildings at all, are there? A. No, sir.

Q. You heard the testimony of Mr. Warren that the lights had been put out at his station at that time?

A. Yes, sir.

Q. And all of the stations there had closed down at the time that this accident happened? [344]

A. Well, there is only one station there in that locality, that immediate locality, I should say.

Q. And that would be his station?

A. Yes, sir.

Mr. Nourse: That is all.

Mr. Menzies: That is all.

The Court: The testimony of the cafe owner was—

Mr. Menzies: I am sorry, your Honor. I didn't hear you.

The Court: The testimony of the cafe owner was—

Mr. Menzies: That the light was out immediately in front of the cafe.

The Court: That is right. I want to know if the witness noticed that, that the light was out and that the lamp post immediately in front of the cafe was not lighted.

The Witness: No, sir, I didn't notice whether that was burning or not.

The Court: What was the condition of the weather?

The Witness: It was clear. The pavement was dry.

The Court: On that night?

The Witness: Yes, sir.

Q. By Mr. Nourse: It was one of those dark, clear nights; not with any moon?

A. There was no moon.

Mr. Nourse: That is all.

The Court: That is all. [345]

Mr. Menzies: May this witness be excused?

The Court: Yes.

(Witness excused.)

The Court: Anything further?

Mr. Menzies: That is all. We rest

Mr. Nourse: We rest.

[Endorsed]: Filed Jun. 13, 1947. [346]

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[Endorsed]: No. 11661. United States Circuit Court of Appeals for the Ninth Circuit. Home Indemnity Company of New York, Appellant, vs. Standard Accident Insurance Company of Detroit; George White; James Carl Fitzgerald; James Richard Osborne; Michael Lee and Patricia Lee, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed Jun. 20, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.



In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11661

(Civil Action No. 5729 O'C, District Court, Southern  
District of California, Central Division)

STANDARD ACCIDENT INSURANCE COMPANY  
OF DETROIT,

Appellee,

vs.

HOME INDEMNITY COMPANY OF NEW YORK,  
et al.,

Appellants.

APPELLANT HOME INDEMNITY COMPANY  
OF NEW YORK'S STATEMENT OF POINTS  
ON APPEAL, AND DESIGNATION OF  
RECORD

Appellant Home Indemnity Company of New York makes the following statement of points upon which it intends to rely upon this appeal:

1. The court's finding of fact that George White has at all times cooperated with the defendant Home Indemnity Company of New York in the investigation of the accident referred to in said complaint is without support in the evidence and is contrary to the evidence.

2. The court's finding of fact that the defendant George White has not breached any of the conditions of the policy issued by the defendant, Home Indemnity Company of New York, upon his part to be performed, is without support in the evidence and is contrary to the evidence.

3. The court's finding of fact that the defendant George White did not, in reporting the accident referred to in said complaint to the Home Indemnity Company of New York, make any false, conflicting, misleading or inconsistent statements of fact, is without any support in the evidence and is contrary to the evidence.

4. The court's finding of fact that the defendant Home Indemnity Company of New York has not been in anywise prejudiced in any action, statement or omission of George White is without support in the evidence and is contrary to the evidence.

5. The court's finding of fact that it is the duty of the Home Indemnity Company of New York to attempt to establish the truth of the statement of George White, that he was asleep and did not know that the accident occurred, so long as George White maintains that that statement is true, is without support in the evidence and is contrary to the evidence.

6. The court's finding of fact that the Home Indemnity Company of New York is estopped in this action to assert the untruth of said statement or to assert that by reason of said statement he has failed to cooperate with it in the investigation and defense of the claims made by the plaintiff in said court actions, is without support in the evidence and is contrary to the evidence.

7. The court's finding of fact that defendant George White has performed the duty of cooperating with defendant Home Indemnity Company of New York, and that there has been no breach by him of the conditions of plaintiff's policy requiring him to cooperate with it, is without support in the evidence and is contrary to the evidence.

8. The evidence shows that defendant George White breached the cooperation clause of the Home Indemnity Company of New York's policy of insurance, in making a false statement of the facts and circumstances of the accident and his connection with it.

9. The evidence shows that compliance with the cooperation clause of the Home Indemnity Company of New York's insurance policy is a condition precedent to the attaching of liability thereunder, and the maintenance of any court action on said policy.

10. The evidence shows that defendant George White made such conflicting and irreconcilable statements regarding the happening of the accident and his connection therewith as to totally destroy his credibility as a witness for the defense of the actions to the prejudice of the Home Indemnity Company of New York.

\* \* \* \* \*

Dated: July 2, 1947.

THOMAS P. MENZIES  
HAROLD L. WATT

By Thomas P. Menzies

Attorneys for Appellant Home Indemnity Company of  
New York

[Affidavit of Service by Mail]

[Endorsed]: Filed Jul. 7, 1947. Paul P. O'Brien,  
Clerk.

